

# Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants

## What are Brownfields?

These guidelines are provided pursuant to Catalog of Federal Domestic Assistance # 66.818. A brownfield site is “real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant,” as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 §101(39), as amended (CERCLA). The Small Business Liability Relief and Brownfields Revitalization Act (“Brownfields Law” or “the Law”, P.L. 107-118) requires the U.S. Environmental Protection Agency (EPA) to publish guidance to assist applicants in preparing proposals for grants to address these brownfield sites.

## Background

In the early 1990s, stakeholders expressed their concern to EPA about the problems associated with brownfields across the country. More than 60,000 properties that were once used for industrial, manufacturing, or commercial uses were lying abandoned or underused due to the suspicion of hazardous substance contamination. Brownfield areas, particularly those in city centers, were contributing to blight and joblessness in surrounding communities. Unknown environmental liabilities were preventing communities, developers, and investors from restoring these properties to productive use and revitalizing impacted neighborhoods.

In 1994, EPA responded to the brownfield problem with an environmental protection approach that is locally based, encourages strong public-private partnerships, and promotes innovative and creative ways to assess, clean up, and redevelop brownfield sites. This approach empowers state, tribal, and local environmental and economic development officials to oversee brownfield activities, and encourages implementing local solutions to local problems. EPA also has provided funding to create local environmental job training programs to ensure that the economic benefits derived from brownfield revitalization efforts remain in local neighborhoods.

## The Brownfields Law

On January 11, 2002, the President signed into law the Small Business Liability Relief and Brownfields Revitalization Act (Brownfields Law). The Brownfields Law expands potential federal financial assistance for brownfield revitalization, including grants for assessment, cleanup, and job training. The law also limits the liability of certain contiguous property owners and prospective purchasers of brownfield properties, and clarifies innocent landowner defenses to encourage revitalization and reuse of brownfield sites. The Brownfields Law also includes

provisions to establish and enhance state and tribal response programs, which will continue to play a critical role in the successful cleanup and revitalization of brownfields.

The Brownfields Law contains provisions that are important for grant applicants to keep in mind when using these guidelines.<sup>1</sup> Some of those features are summarized below.

#### *Applicant Eligibility*

- The Brownfields Law expands eligibility for brownfields funding by broadening the entities eligible for funding. It also permits the award of cleanup grants to eligible entities, including nonprofit organizations, that own the property they wish to clean up. EPA has adopted a definition of nonprofit organizations that includes universities and other nonprofit educational institutions. In addition, EPA will continue its policy of accepting proposals from “coalitions,” or groups of eligible entities, to pool their revolving loan capitalization grant funds. A coalition is a grouping of two or more eligible entities joined together under one grant recipient. The grant recipient must administer the grant, is accountable to EPA for proper expenditure of the funds, and will be the point of contact for the other coalition members.

#### *Site Eligibility*

- The Brownfields Law defines a brownfield site broadly, but does exclude certain sites from funding eligibility unless EPA makes a property-specific determination to fund (see *Appendix 3* for additional information). This determination will be based on whether or not awarding a grant will protect human health and the environment and either promote economic development or enable the property to be used for parks, greenways, and similar recreational or nonprofit purposes. (See *Appendix 3* and *Appendix 4* for more information on “eligibility for funding” and “property-specific determinations.”)
- The Brownfields Law excludes the following three types of properties from funding eligibility and does not allow EPA the opportunity to make property-specific determinations on these properties: 1.) Facilities listed (or proposed for listing) on the National Priorities List (NPL); 2.) Facilities subject to unilateral administrative orders, court orders, administrative orders on consent or judicial consent decrees issued to or entered into by parties under CERCLA; and 3.) Facilities that are subject to the jurisdiction, custody or control, of the United States government. (Note: Land held in trust by the United States government for an Indian tribe **is eligible** for brownfields funding.)

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<sup>1</sup>The authority to provide grants in the Brownfields Law is codified at §104(k) of CERCLA.

*Petroleum Eligibility*

- Generally, the Law allows EPA to award brownfield grant funds for activities at petroleum-contaminated sites that: 1) EPA or the state determines are of “relatively low risk” compared with other petroleum-contaminated sites in the state; 2) EPA or the state determines have no viable responsible party and that will be assessed, investigated, or cleaned up by a person that is not potentially liable for cleaning up the site; and 3) are not subject to a Resource Conservation and Recovery Act (RCRA) 9003(h) order. EPA must make available 25 percent of the total grant funds for assessment and/or cleanup of petroleum-contaminated sites. EPA has designed these guidelines to allow applicants to specify the amount of funding that will be used at petroleum-contaminated sites. (See *Appendix 3* for additional information.)

*Cost Share*

- The Brownfields Law requires a 20 percent cost share for revolving loan fund and cleanup grants. For example, a \$200,000 cleanup grant will require a \$40,000 cost share; a \$1 million RLF grant will require \$200,000 cost share.

*Prohibition on Administrative Costs*

- Grant funds cannot be used for administrative costs.

*Additional Uses/Restrictions of Grant Funds*

- Grant funds **cannot be used** to pay response costs at a brownfield site for which the recipient of the grant or loan is potentially liable under CERCLA §107. (See *Appendix 2, Prohibition on Use of Funds*, for additional information on prohibitions).
- Under the Brownfields Law, a *local* government (this does not include Tribal governments) may use up to 10 percent of its grant funds for monitoring the health of populations exposed to one or more hazardous substances, pollutants, or contaminants from a brownfield site and monitoring and enforcement of any institutional control used to prevent human exposure to any hazardous substance, pollutant, or contaminant from a brownfield site. To effectively oversee assessments and cleanups, local governments may use grant funds (within the overall 10 percent limit) for other related program development and implementation activities.

### **What are the Brownfields Assessment, Revolving Loan Fund, and Cleanup Grant Programs?**

**Three** competitive brownfields grant programs are discussed in these guidelines: assessment grants, revolving loan fund (RLF) grants, and cleanup grants.

#### **Assessment Grants**

Assessment grants provide funding for a grant recipient to inventory, characterize, assess, and conduct planning and community involvement related to brownfield sites.

- Applicants may request grant funds up to \$200,000 for sites contaminated by hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum) **and** up to \$200,000 to address sites contaminated by petroleum. Requests for assessment grant funds may not exceed \$400,000 per applicant unless a site-specific waiver is requested.

Applicants requesting a site-specific waiver may request grant funds up to \$350,000 for sites contaminated by hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum) **and** up to \$350,000 to address sites contaminated by petroleum. Waivers will be based on the anticipated level of contamination, size, or ownership status of the site. A site-specific waiver is applicable to one site **only**. Due to budget limitations, requests for assessment grant funds may not exceed \$700,000 per applicant where a site-specific waiver is requested. To be eligible to apply for the full \$700,000, applicants must request funds to assess only **one** site contaminated by hazardous substances, pollutants or contaminants that requires \$350,000 or more to assess and only **one** site contaminated by petroleum that requires \$350,000 or more to assess.

- The performance period for these grants is two years.
- Refer to *Appendix 2, Prohibitions on Use of Funds*, for information on activities that may not be funded using brownfields grant funds.

#### **Revolving Loan Fund Grants**

Revolving Loan Fund (RLF) grants provide funding for a grant recipient to capitalize a revolving loan fund and to provide subgrants to carry out cleanup activities at brownfield sites.

- An eligible entity may apply for up to \$1,000,000 for an initial RLF grant.

- Proposals may be submitted by “coalitions,” or groups of eligible entities, to pool their revolving loan capitalization grant funds. A coalition is a grouping of two or more *eligible entities* joined together under one grant recipient. The grant recipient must administer the grant, be accountable to EPA for proper expenditure of the funds, and be the point of contact for the other coalition members. Members of the coalition other than the grant recipient must submit letters agreeing to be part of the coalition.
- Coalitions of eligible entities may apply together under one recipient for up to \$1,000,000 per eligible entity. These funds may be used to address sites contaminated by petroleum and hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum).
- An RLF grant recipient must use at least 60 percent of the awarded funds to capitalize and implement a revolving loan fund. Revolving loan funds generally are used to provide no-interest or low-interest loans for brownfields cleanups. An applicant may *loan* RLF grant funds to itself. An RLF grant recipient also may use its funds to award subgrants to other eligible entities, including nonprofit organizations, for brownfields cleanups on sites owned by the subgrantee; however, an RLF grant recipient may use no more than 40 percent of the awarded funds for cleanup subgrants and may not *subgrant* to itself. In the case of a coalition, the RLF grant recipient may not subgrant to other coalition members. Unlike loans, cleanup subgrants do not require repayment.
- An RLF award requires a 20 percent cost share, which may be in the form of a contribution of money, labor, material, or services, and must be for eligible and allowable costs (the match must equal 20 percent of the amount of funding provided by EPA and cannot include administrative costs, as described in *Appendix 2*). An RLF grant applicant may request a waiver of the 20 percent cost share requirement based on hardship.
- The performance period for these grants is five years.
- Refer to *Appendix 2, Prohibitions on Use of Funds*, for information on activities that may not be funded using brownfields grant funds.

### Cleanup Grants

Cleanup grants provide funding for a grant recipient to carry out cleanup activities at brownfield sites.

- An eligible entity may apply for up to \$200,000 per site. Due to budget limitations, no entity should apply for funding cleanup activities at more than five sites. These funds may be used to address sites contaminated by petroleum and hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum).

- Cleanup grants require a 20 percent cost share, which may be in the form of a contribution of money, labor, material, or services, and must be for eligible and allowable costs (the match must equal 20 percent of the amount of funding provided by EPA and cannot include administrative costs, as described in *Appendix 2*). A cleanup grant applicant may request a waiver of the 20 percent cost share requirement based on hardship.
- An applicant must own the site for which it is requesting funding at time of application or demonstrate the ability to acquire title.
- The performance period for these grants is two years.
- Refer to *Appendix 2, Prohibitions on Use of Funds*, for information on activities that may not be funded using brownfields grant funds.

#### **How Much Funding is Available in FY04?**

EPA estimates that \$100 million will be available to make up to 200 grant awards, contingent upon the availability of funds in FY 2004.

#### **Who Can Apply?**

Eligible applicants, including those with existing brownfields grants, may apply for one, or all, of the grant programs. The following table indicates, by grant program, what types of entities are eligible to receive EPA funds for brownfields assessment, RLF, and cleanup grants:

| <b>Type of Applicant</b>  | <b>Assessment</b> | <b>RLF<sup>1</sup></b> | <b>Cleanup<sup>1</sup></b> |
|---|-------------------|------------------------|----------------------------|
| General Purpose Unit of Local Government <sup>2</sup>   | ✓                 | ✓                      | ✓                          |
| Land Clearance Authority or other quasi-governmental entity that operates under the supervision and control of, or as an agent of, a general purpose unit of local government | ✓                 | ✓                      | ✓                          |
| Government Entity Created by State Legislature  | ✓                 | ✓                      | ✓                          |
| Regional Council or group of General Purpose Units of Local Government  | ✓                 | ✓                      | ✓                          |

| Type of Applicant  | Assessment | RLF <sup>1</sup> | Cleanup <sup>1</sup> |
|--|------------|------------------|----------------------|
| Redevelopment Agency that is chartered or otherwise sanctioned by a state  | ✓          | ✓                | ✓                    |
| State  | ✓          | ✓                | ✓                    |
| Indian Tribe other than in Alaska <sup>3</sup>   | ✓          | ✓                | ✓                    |
| Alaska Native Regional Corporation, Alaska Native Village Corporation, and Metlakatla Indian Community <sup>4</sup>  | ✓          | ✓                | ✓                    |
| Nonprofit organizations <sup>5</sup>   |            |                  | ✓                    |
| <p><sup>1</sup> To be eligible for a cleanup grant, the fund recipient must own the site for which they seek funding.</p> <p><sup>2</sup> For purposes of the brownfields grant program, EPA defines general purpose unit of local government as a “local government” as that term is defined under 40 CFR Part 31.</p> <p><sup>3</sup> Intertribal Consortia are eligible for funding in accordance with EPA’s policy for funding intertribal consortia published in the Federal Register on _____. This policy also may be obtained from your Regional Brownfields Contact.</p> <p><sup>4</sup> Alaska Native Regional Corporations and Alaska Native Village Corporations are defined in the Alaskan Native Claim Settlement Act (43 U.S.C. 1601 and following).</p> <p><sup>5</sup> For the purposes of the brownfields grant program, EPA will use the definition of nonprofit organizations contained in Section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999, Public Law 106-107. The term “nonprofit organization” means any corporation, trust, association, cooperative, or other organization that is operated mainly for scientific, educational, service, charitable, or similar purpose in the public interest; is not organized primarily for profit; and uses net proceeds to maintain, improve, or expand the operation of the organization.</p> |            |                  |                      |

### **How Do I Apply for a Brownfields Grant?**

EPA has established a competitive system for awarding grants to applicants whose proposals have received the highest rankings.

#### **Proposal Submission**

Applicants will submit a proposal for **each grant type** that they are applying for (i.e., assessment, revolving loan fund, and/or cleanup.) If an applicant is applying for more than one

grant type, they must submit a **separate** proposal for each grant type. Each proposal must address the *threshold* and *ranking* criteria identified for each grant activity type. Every proposal should stand on its own merits and should not reference responses to criteria in another proposal.

- To submit a proposal, applicants must send an original proposal to [Insert name of person] Environmental Management Support, Inc., 8601 Georgia Avenue, Suite 500, Silver Spring, MD 20910, phone 301-589-5318, and a copy to their Regional representative at the addresses shown in *Appendix 1*. Refer to the section, *What Are the General Proposal Requirements?*, for instructions on preparing proposals. Proposals must be postmarked or sent via registered or tracked mail to the appropriate Regional and Headquarters representative by **November 17, 2003**.

#### **What is EPA's Process for Evaluating Proposals and Selecting the Grant Recipients?**

- Proposals will be evaluated and ranked by evaluation panels. These panels will evaluate responses to threshold criteria on a pass/fail basis and will evaluate responses to ranking criteria on a numerical scoring basis. If a response to a **threshold criterion** fails, the proposal will be disqualified from further consideration under these guidelines. However, EPA may seek clarification from an applicant regarding its response to the threshold criteria. **(Note: EPA may not seek clarification on an applicant's response to the Applicant Information section or the ranking criteria.)** Scores on each **ranking criterion** will be totaled to determine proposal rankings.
- Funding requests for each grant type will be **evaluated and ranked separately**.
- Final selections will be made by EPA senior management based upon the ranking of proposals by National Evaluation Panels. EPA decisions may take into account other statutory and policy considerations, such as urban and non-urban distribution and other geographic factors; compliance with the statutory petroleum funding allocation; the benefits of promoting the long-term availability of funds under the RLF grants; designation as a federal Empowerment Zone, Enterprise Community, or Renewal Community; population; and whether the applicant is a federally recognized Indian tribe. Successful proposal applicants will be informed in writing of their selection.
- Funding will be awarded as a cooperative agreement. EPA anticipates substantial involvement with the cooperative agreement recipient. The applicants whose proposals are selected will be asked to submit a cooperative agreement application package to their EPA Regional office. This package will include an EPA-approved work plan, a final budget, and required forms. Cooperative agreements approved under this final selection step will include terms and conditions. These terms and conditions will be binding on the grant recipient and cover areas such as complying with all applicable federal and state laws and ensuring that cleanups protect human health and the environment. Applicants

also will be required to submit progress reports in accordance with grant regulations found in 40 CFR 30.51 or 40 CFR 31.40. EPA will work closely with the applicant to process and finalize the cooperative agreement package.

- Any disputes regarding proposals or applications submitted in response to these guidelines will be resolved in accordance with 40 CFR 30.63 and Part 31, Subpart F.
- In accordance with Executive Order 12372, EPA encourages applicants to contact their State Intergovernmental Review Office early so that the required intergovernmental review process may begin immediately upon selection by EPA. If the state does not have an Intergovernmental Review Office, the successful applicant must provide notice of the proposed agreement directly to affected state, area-wide, regional, and local entities. Contact your Regional Brownfields Contact for assistance, if needed.
- EPA reserves the right to reject any or all proposals or applications and make no awards.

#### **What Are the General Proposal Requirements?**

All materials included in the proposal (including maps and other attachments) must be printed on **letter-sized paper** (8½" by 11") and font sizes may be no smaller than 12 points. Proposals received by EPA will be copied and distributed to appropriate reviewers; therefore, **binders and color printing are discouraged**. Proposals should be no more than 15 single-sided pages in length, not including the cover letter and attachments. However, attachments should be kept to a minimum. Please do not include photos and other graphics. **Pages in excess of this limit will be removed and not evaluated.** Applicants should clearly mark information they consider confidential. EPA will make final confidentiality decisions in accordance with Agency regulations in 40 CFR Part 2, Subpart B.

Proposals should be concise and well organized, and must provide the information requested in the guidelines, including responses to each criterion. Factual information about your proposed project and community should be provided. Proposals should not include discussions of broad principles that are not specific to the proposed work or project. Responses to criteria should include the criteria number and title but need not restate the entire text of the criteria.

Electronic copies of these guidelines can be obtained from the EPA brownfields web site ([www.epa.gov/brownfields](http://www.epa.gov/brownfields)) or by contacting your Regional Brownfields Contact listed in *Appendix I*.

**What Should be in My Proposal?**

## **Applicant Information**

Applicant Information must accompany every proposal. *Reminder: Applicants are to submit SEPARATE proposals for EACH type of grant for which you are applying.*

Please provide the following for EACH grant proposal you are preparing:

### **I. Cover Letter**

Submission of a cover letter is required. The cover letter should briefly (maximum 2 pages) describe your overall Brownfields project and how funding this proposal will advance your project goals. The letter must be prepared on the **applicant's** letterhead and signed by an official of your organization.

NOTE: if you are applying for more than one site, you may provide up to an additional two pages of site-specific cover letter information per site as needed to provide site-specific responses.

### **II. Applicant Information**

- A. Project Title: Be as specific as possible.
- B. Grant Type: Identify the type of grant you are applying for (i.e., assessment, RLF, or cleanup) and the type of contamination to be addressed by grant funding (i.e., hazardous substance or petroleum).
- C. Total Dollar Amount Requested for this Grant: Specify the actual dollar amount you are requesting and identify whether you are requesting hazardous substance funding, petroleum funding, or both. For example, \$200,000 hazardous substance; \$150,000 petroleum. For assessment grant proposals only: if applying for an assessment waiver of up to \$150,000, please include this in the dollar amount. For example, \$350,000 hazardous substance.
- D. Name of Applicant: The proposed recipient of the grant funds.

*Note: For RLF coalitions, it is not necessary to list the coalition members. However, the entity named here will be considered the cooperative agreement recipient.*

E. Project Contact: Name, mailing address, telephone and fax numbers, and email address of the person from your organization who is responsible for the project proposal. We will contact this person if we need further information.

F. Chief Executive: Name of the elected or other official who is head of your organization, mailing address, email address, and phone and fax numbers.

*Note: For RLF coalition proposals, provide the information for the chief executive for each eligible entity in the coalition.*

G. Location: City, county, and state or Indian Reservation, tribally-owned lands, tribal fee lands, etc., of the area targeted by your proposal.

*Note: For RLF coalition proposals, list the relevant information for each eligible entity.*

H. Population: The population of your jurisdiction and of the area targeted by your proposal. Tribes should provide the number of tribal/non-tribal members affected.

*Note: For RLF coalition proposals, list the relevant information for each eligible entity.*

I. Special Consideration: Indicate whether you qualify for special consideration during proposal evaluation (e.g., population of your community under 100,000; federally recognized tribe; federally designated Empowerment Zone/Enterprise Community; or federally designated Renewal Community).

## Assessment Grant Criteria

Provide responses to the following threshold and ranking criteria if you are applying for assessment grant funding. Threshold criteria are pass/fail criteria. If your responses do not meet the threshold criteria, the ranking criteria will not be evaluated.

### Threshold Criteria for Assessment Grants

*Note: For all threshold criteria, EPA may seek further clarification of responses, if needed, during the selection review process.*

A. Applicant Eligibility

1. Describe how you are an eligible entity for the grant for which you are applying. Refer to the description of applicant eligibility in the sections *What are Brownfields?* and *Who Can Apply?*.

B. Community Notification

1. Describe how the affected community(ies) was/were notified of the preparation and submission of **this grant proposal**. Demonstrate that you notified the community(ies) of **this grant proposal** and provided sufficient opportunity for **public comment** prior to submitting this proposal. This may include putting a notice of availability in the local newspaper or other widely available/accessible local media asking for public comment. Please do not include prior notices from previous grant competitions. Notifications must be current and related to this specific proposal being submitted for consideration. Failure to do this will result in failure of this application.

C. Letter from the State or Tribal Environmental Authority

1. For an applicant other than a state or tribal environmental authority, provide a letter from the appropriate state or tribal environmental authority acknowledging that the applicant plans to conduct assessment activities and is planning to apply for Federal grant funds. If you are applying for multiple types of grant program activities, you need submit only one letter acknowledging the relevant grant activities. *However, you must provide the letter as an attachment to EACH proposal.* Please note that general correspondence and documents evidencing state involvement with the project (i.e., state enforcement orders or state notice letters) are NOT acceptable. Contact your Regional Brownfields Coordinator if you have any questions.

D. Site Eligibility and Property Ownership Eligibility

If you do not have specific sites identified, please move on to the ranking criteria in the next section. If you have identified specific sites, address the following for each site. If a site does not pass the threshold criteria below, an applicant **may not substitute other sites**.

1. Indicate whether you are applying for a waiver of the \$200,000 per site funding limit. If so, indicate the dollar amount requested and provide a justification as to why the waiver should be granted. Justification must be based on the anticipated level of contamination, size, or status of ownership.
2. List the site name and address and describe its operational history, environmental concerns, and its current site use and activity.

3. If you determine the site is not eligible for funding without a property-specific determination, then you will need to apply for a property-specific determination. To apply for a property-specific determination, attach the information requested in *Appendix 4* Section 4.1.
4. Identify who currently owns the site, when they became owner, and from whom the site was acquired.
5. Identify how the site became contaminated and, to the extent possible, describe the nature and extent of the contamination.
6. Identify known ongoing or anticipated environmental enforcement actions related to the brownfield site for which funding is sought. The applicant should demonstrate their relationship, if any, to the contamination or hazardous waste at the site by describing any inquiries or orders from federal, state, or local government entities that the applicant is aware of regarding the responsibility of any party for the contamination or hazardous waste at the site. The information provided in this section will be verified, and EPA will conduct an independent review of information related to the applicant's responsibility for the contamination or hazardous waste at the site.
7. If the site is not owned by the applicant:
  - a. describe your relationship with the owner;
  - b. describe the owner's role in the work to be performed; and
  - c. indicate how you will gain access to the site.
8. If you, the applicant, own the site:
  - a. describe how you took ownership of the site (e.g., tax foreclosure, purchase, donation, eminent domain) and date of acquisition;
  - b. identify whether or not all disposal of hazardous substances at the site occurred before you acquired the property;
  - c. describe how, prior to taking ownership, you performed all appropriate inquiry into the previous ownership and uses of the property;
  - d. describe whether you are responsible for any of the environmental concerns at the site;
  - e. describe if you, in any way, are potentially liable, or affiliated with any other person who is potentially liable, for contamination at the site;
  - f. identify if you have any direct and indirect familial relationship or any contractual, corporate, or financial relationships with a potentially liable entity; and
  - g. describe the steps which have been taken with regard to the hazardous substances or contamination at the site.

In addition to the site eligibility threshold criteria discussed in #8 above, applicants should also be aware that in order to maintain their status as an eligible entity certain continuing obligations apply. For example: grantees must comply with land use restrictions and institutional controls; take reasonable steps with respect to the hazardous substances on the property; cooperate, assist and allow access to authorized representatives; and comply with CERCLA information requests and subpoenas and provide legally required notices. For more information on the obligations of owners of contaminated property, please see EPA's *Common Elements Reference Sheet* at <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/common-elem-ref.pdf>.

#### Petroleum Sites

9. If the site is contaminated with petroleum, you must provide appropriate documentation with your proposal that your state or EPA has determined:
  - a. that the site is of “relatively low risk” compared with other “petroleum-only” sites in the state;
  - b. that there is “no viable responsible party” legally capable of satisfying obligations under Federal or state law to assess, investigate, or clean up the site;
  - c. that funding for the site will be used by a party that is not potentially liable for the petroleum contamination to assess, investigate, or clean up the site; and
  - d. that the site is not subject to a corrective action order under the Resource Conservation and Recovery Act (RCRA) §9003(h).

#### Ranking Criteria for Assessment Grants

Assessment Grant Proposal Budget (a maximum of 5 points may be received for this criterion)

Provide the proposed budget(s) for your proposal, including a detailed description of each task. Typical tasks might include “Phase I Assessments,” “Community Outreach,” and “Cleanup Planning.” The budgets should show the distribution of funds, including cost estimates for each of the proposed activities.

**Note that you must provide separate budgets for funds intended for use on petroleum-contaminated sites and funds intended for use on sites contaminated by hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum).**

A **local government** may use up to 10 percent of its grant funds for monitoring the health of populations exposed to one or more hazardous substances, pollutants, or contaminants from a brownfield site and monitoring and enforcement of any institutional control used to prevent human exposure to any hazardous substance, pollutant, or contaminant from a brownfield site. To effectively oversee assessments and cleanups, local governments may use grant funds

(subject to the 10 percent limit) for other related program development and implementation activities.

### Sample Format for Budget Description

|   | Project Tasks |          |          |          |       |
|---|---------------|----------|----------|----------|-------|
| Budget Categories<br>(programmatic costs only)  | [Task 1]      | [Task 2] | [Task 3] | [Task 4] | Total |
| Personnel   |               |          |          |          |       |
| Fringe Benefits   |               |          |          |          |       |
| Travel  |               |          |          |          |       |
| Equipment <sup>1</sup>  |               |          |          |          |       |
| Supplies  |               |          |          |          |       |
| Contractual <sup>2</sup>  |               |          |          |          |       |
| Other (specify) _____   |               |          |          |          |       |
| <b>Total</b>  |               |          |          |          |       |
| <sup>1</sup> EPA defines equipment as items that cost \$5,000 or more with a useful life of more than one year. Items costing less than \$5,000 are considered supplies. Generally, equipment is not required for assessment grants.<br><sup>2</sup> Applicants must comply with the procurement procedures contained in 40 CFR 31.36, or for non-profits, with 40 CFR 30.40. |               |          |          |          |       |

Provide responses to the following assessment ranking criteria:

- A. Community Need (a maximum of 15 points may be received for this criterion)
1. Provide a detailed description of the target community that the project(s) will benefit. Include demographic information for the target community and indicators such as the poverty rate, unemployment rate, special community situations (e.g., population size), or other environmental justice factors that support community need relating directly to this project (e.g., low-income and/or minority communities; sensitive populations, such as children and pregnant women; or communities disproportionately impacted by environmental factors). Identify the source for this information.
  2. Explain how the targeted community will benefit from this grant.

3. Characterize the impact of brownfields on your community (or communities) by describing the extent of brownfields (e.g., size, number, location) and the economic, health, and/or environmental impacts of the brownfields.
- B. Site Selection Process (a maximum of 10 points may be received for this criterion)
  1. Describe how sites were selected/will be selected and what site selection criteria were/will be developed.
  2. Describe possible or previous inventory activities, prioritization efforts, or other activities.
  3. If you anticipate conducting assessment activities on privately owned sites, discuss possible access issues and how you would resolve the issues.
- C. Sustainable Reuse of Brownfields/Development Potential (a maximum of 10 points may be received for this criterion)
  1. Describe your “sustainable development” strategy for the site(s) or targeted area(s) (i.e., how your plans for reuse of the site(s) or targeted area(s) will simultaneously enhance your community’s social, economic, and environmental well being).
  2. Describe your specific plans to ensure that, after cleanup, the site(s) or targeted area(s) will be reused in a manner that leads to environmental improvement through reductions in pollution and resource consumption. Strategies to do so may include, for example, green building, smart growth, clean energy production, eco-industrial development, native landscaping, alternative stormwater management, and/or others.
  3. Describe how this project(s) will stimulate economic development while responding to community needs, including the creation of jobs, capital investment, and increases to the local tax base.
  4. Explain how your community is working to prevent the creation of future brownfields.
  5. How does your proposed reuse(s) and your ongoing efforts to prevent the creation of future brownfields fit into your community’s master plan, economic development plan/activities, other relevant plans/activities, and your ongoing efforts to redevelop brownfields?

- D. Creation and/or Preservation of Greenspace/Open Space (a maximum of 5 points may be received for this criterion)
1. Describe the extent to which the grant would facilitate the creation of , preservation of, or addition to a park, greenway, undeveloped property, recreational property, or other property used for nonprofit purposes.
- E. Reuse of Existing Infrastructure (a maximum of 5 points may be received for this criterion)
1. Describe whether the project will use existing infrastructure (e.g., existing roads, rail/bus/subway services, buildings, utility services, sidewalks/pedestrian trails, recreational services, landscaping, neighborhood centers/institutions) or require its expansion.
- F. Community Involvement (a maximum of 15 points may be received for this criterion)
1. Discuss your plan for involving the local community (e.g., neighborhood organizations, citizens' groups, borrowers, redevelopers and other stakeholders) in cleanup decisions or reuse planning.
  2. Describe your efforts and/or plans to develop partnerships at the local, state, and/or tribal level with other stakeholders to ensure appropriate and sustainable cleanup and redevelopment of brownfields.
  3. Describe the specific means by which you will communicate the progress of your project to citizens, including plans for communicating in languages indigenous to the community.
  4. Provide a list of the community-based organizations involved and a contact person, phone number, and a brief description of the organization's activities and representation (these organizations may include, but are not limited to, local citizen groups, environmental organizations, civic organizations, local business groups and institutions, educational institutions, and local labor organizations).

*Note: EPA may conduct reference checks to ensure that organizations identified are supportive and involved with the brownfields project. EPA encourages early community notification and continuing community involvement.*

**G. Reduction of Threats to Human Health and the Environment (a maximum of 10 points may be received for this criterion)**

1. Describe how the funds will be used to address/facilitate the identification and/or reduction of threats to human health and the environment within the target area (including cancer, asthma, or birth defects) that may be associated with exposure to hazardous substances, pollutants, contaminants, or petroleum.
2. Describe how you are working with your state or tribal environmental authority and/or local public health department to ensure that public health issues are considered during the redevelopment process.

**H. Leveraging of Additional Resources (a maximum of 15 points may be received for this criterion)**

1. Describe the financial needs for each phase of the project (assessment, cleanup, and redevelopment), if known. For example, assessment of the property is estimated at \$300,000; cleanup of the property is estimated at \$500,000; redevelopment of the property into an XX-square foot office building is estimated at \$2.5 million.
2. Identify the funds (e.g., general revenues, Tax Increment Financing (TIF), staff time/in-kind) that your agency/organization has committed or will commit to meet the needs described above.
3. Describe all other funding sources (e.g., federal, state, nonprofit, or private) that will be committed or that you are pursuing to fill in any remaining funding gaps to ensure the success of this project.

**I. Ability to Manage Grants (a maximum of 10 points may be received for this criterion)**

1. Describe your ability to manage this grant and oversee the work, or describe the system(s) you have in place to acquire the requisite expertise.
2. Describe your history of managing federal funds generally. You must identify and provide information regarding the status of any adverse audit findings from an OMB Circular A-133 audit, an audit conducted by a federal, state, tribal, or local government inspector general or similar organization, or audits conducted by the U.S. General Accounting Office. You also must note whether you are, or have previously been, required to comply with special “high risk” terms and conditions under agency regulations implementing OMB Circular A-102.

3. If you are, or have been, a recipient of an EPA Brownfields cooperative agreement(s), provide information regarding your compliance with quarterly progress reports, brownfields reporting measures, and annual financial status reporting.
4. If you are a current recipient of an EPA Brownfields cooperative agreement(s), indicate the year of award and the amount of funds remaining.
5. If you are a current recipient of an EPA Brownfields cooperative agreement(s), highlight significant accomplishments generated through the use of the funds.

## Revolving Loan Fund Criteria

Provide responses to the following threshold and ranking criteria if you are applying for revolving loan fund grant funding. Threshold criteria are pass/fail criteria. If your responses do not meet the threshold criteria, the ranking criteria will not be evaluated.

### Threshold Criteria for RLF Grants

*Note: For all threshold criteria, EPA may seek further clarification of responses, if needed, during the selection review process.*

#### A. Applicant Eligibility

1. Describe how you are an eligible entity for the grants for which you are applying. Refer to the description of applicant eligibility in the sections *What are Brownfields?* and *Who Can Apply?*.

*Note: Coalition applicants for RLF grants must demonstrate that all coalition members are eligible entities. In addition, for coalition members other than the applicant, you must submit a letter from each eligible coalition member in which they agree to be part of the coalition.*

#### B. Community Notification

1. Describe how the community was notified of the preparation and submission of **this proposal**. Demonstrate that you notified the community of **this proposal** and provided sufficient opportunity for **public comment**. This may include putting a notice of availability in the local newspaper or other widely available/accessible local media asking for public comment. Please do not include prior notices from previous grant competitions. Notifications must be current and related to this specific proposal being submitted for consideration. Failure to do this will result in failure of this application.

C. Legal Authority to Manage a Revolving Loan Fund

1. Provide an opinion from your legal counsel that demonstrates your legal authority to perform the actions necessary to manage a revolving loan fund. At a minimum, legal authority must include the ability to hold funds, make loans, enter into loan agreements, and collect repayments. This authority may be based on statute, regulation, or other authority. *Attach your counsel's legal opinion.*

D. Cleanup Authority and Oversight Structure

1. Describe how you will oversee the cleanup at the site. Indicate whether you plan to require loan or subgrant recipients to enroll in a state or tribal voluntary response program. If you do not plan to require loan or subgrant recipients to enroll in a state or tribal voluntary response program, provide a description of the technical expertise you have to manage the cleanup and/or whether you plan to acquire additional technical expertise. If you do plan to acquire additional technical expertise, discuss how, consistent with 40 CFR 31.36, you will ensure that this technical expertise is in place prior to beginning cleanup activities.
2. Provide a legal opinion from your counsel that demonstrates that you have legal authority to access and secure sites in the event of an emergency or default of a loan agreement or non-performance under a subgrant. *Attach your counsel's legal opinion.*

E. Cost Share

RLF grant recipients are required by the Brownfields Law to provide a 20 percent cost share.<sup>2</sup> This cost share is calculated as 20 percent of the total federal RLF funds awarded. For example, if you are applying for \$1 million of federal RLF funds, you must provide a cost share of an additional \$200,000. The cost share may be in the form of a contribution of money, labor, material, or services from a non-federal source. If the cost share is in the form of a contribution of labor, material, or other services, it must be incurred for an ***eligible and allowable expense***

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<sup>2</sup>Applicants for an RLF grant may use fees from borrowers, interest on loans, and other “program income” to meet the cost share requirement. However, if an RLF grant applicant plans to use anticipated program income for cost share, the applicant also must demonstrate how alternative sources for obtaining money, labor, material, or services can be used to meet its cost share requirement if program income is less than anticipated during the performance period for the grant. Recipients of RLF grants may not use repayments of loan principal to meet the cost share requirement.

under the grant and not for ineligible expenses, such as administrative costs (see *Appendix 2* for a discussion of prohibited costs).

RLF grant applicants may petition EPA to waive the cost-share requirement if it would place an undue hardship on the eligible entity. EPA will consider hardship waiver requests on a case-by-case basis and will approve such requests on a limited basis. Undue hardship may be defined as bankruptcy or such other indicator of distress, including low per-capita income, unemployment rate above national average, or unemployment or economic adjustment problems resulting from severe short-term or long-term changes in economic conditions.

1. Describe your plans for providing the cost share as required for this RLF program grant. If you are requesting a hardship waiver of the cost share, provide an explanation for the basis of your request as part of your proposal.

F. Letter from the State or Tribal Environmental Authority

1. For an applicant other than a state or tribal environmental authority, provide a letter from the appropriate state or tribal environmental authority acknowledging that the applicant plans to conduct or oversee clean up activities and is planning to apply for Federal grant funds. If you are applying for multiple types of grant program activities, you need only submit one letter acknowledging the relevant grant activities. *Provide as an attachment to each proposal.* Please note that general correspondence and documents evidencing state involvement with the project (i.e., state enforcement orders or state notice letters) are NOT acceptable.

G. Site Eligibility and Property Ownership Eligibility

If you do not have specific sites identified, please move on to the ranking criteria in the next section. If you have identified specific sites, address the following for each site.

1. Identify the proposed borrower or subgrantee. Include the organizational name and address.
2. List the site name and address and describe its operational history, environmental concerns, and its current site use and activity.
3. If you determine the site is not eligible for funding without a property-specific determination, then you will need to apply for a property-specific determination. To apply for a property-specific determination, attach the information requested in *Appendix 4, Section 4.1.*

*Note: EPA may use available information to verify that the site is eligible for funding.*

4. Identify who currently owns the site, when they became the owner, and from whom the site was acquired.

*Note: For subgrants, the subgrantee must own the site.*

5. Identify how the site became contaminated and, to the extent possible, describe the nature and extent of the contamination.
6. Identify known ongoing or anticipated environmental enforcement actions related to the brownfield site for which funding is sought. The applicant should demonstrate their relationship, if any, to the contamination or hazardous waste at the site by describing any inquiries or orders from federal, state, or local government entities that the applicant is aware of regarding the responsibility of any party for the contamination or hazardous waste at the site. The information provided in this section will be verified, and EPA will conduct an independent review of information related to the applicant's responsibility for the contamination or hazardous waste at the site.
7. If the site is not owned by the applicant:
  - a. describe your relationship with the owner;
  - b. describe the owner's role in the work to be performed; and
  - c. indicate how you will gain access to the site.
8. If you, the applicant, own the site:
  - a. describe how you took ownership of the site (e.g., tax foreclosure, purchase, donation, eminent domain) and date of acquisition;
  - b. identify whether or not all disposal of hazardous substances at the site occurred before you acquired the property;
  - c. describe how, prior to taking ownership, you performed all appropriate inquiry into the previous ownership and uses of the property;
  - d. describe whether you are responsible for any of the environmental concerns at the site;
  - e. describe if you, in any way, are potentially liable, or affiliated with any other person who is potentially liable, for contamination at the site;
  - f. identify if you have any direct and indirect familial relationship or any contractual, corporate, or financial relationships with a potentially liable entity; and
  - g. describe the steps which have been taken with regard to hazardous substances or the contamination at the site.

In addition to the site eligibility threshold criteria discussed in #8 above, applicants should also be aware that in order to maintain their status as an eligible entity certain continuing obligations apply. For example: grantees must comply with land use restrictions and institutional controls;

take reasonable steps with respect to the hazardous substances on the property; cooperate, assist and allow access to authorized representatives; and comply with CERCLA information requests and subpoenas and provide legally required notices. For more information on the obligations of owners of contaminated property, please see EPA's *Common Elements Reference Sheet* at <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/common-elem-ref.pdf>.

#### Petroleum Sites

9. If the site is contaminated with petroleum, you must provide appropriate documentation with your proposal that your state or EPA has determined:
  - a. that the site is of “relatively low risk” compared with other “petroleum-only” sites in the state;
  - b. that there is “no viable responsible party” legally capable of satisfying obligations under Federal or state law to assess, investigate, or clean up the site;
  - c. that funding for the site will be used by a party that is not potentially liable for the petroleum contamination to assess, investigate, or clean up the site; and
  - d. that the site is not subject to a corrective action order under the Resource Conservation and Recovery Act (RCRA) §9003(h).

#### Ranking Criteria for RLF Grants

RLF Grant Proposal Budget (a maximum of 5 points may be received for this criterion)

Provide the proposed budget(s) for your proposal, including a detailed description of each task. Typical tasks would include “Community Involvement,” “Establishing the Revolving Fund,” “Marketing the Revolving Fund,” “Operating the Revolving Fund,” “Cleanup Planning,” and “Overseeing Site Cleanup.” The budget also must reflect your cost share. The budget(s) should show the distribution of funds, including cost estimates for each of the proposed activities.

**Note that you must provide separate budgets for funds intended for use on petroleum-contaminated sites and funds intended for use on sites contaminated by hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum).**

A **local government** may use up to 10 percent of its grant funds for monitoring the health of populations exposed to one or more hazardous substances, pollutants, or contaminants from a brownfield site and monitoring and enforcement of any institutional control used to prevent human exposure to any hazardous substance, pollutant, or contaminant from a brownfield site. To effectively oversee assessments and cleanups, local governments may use grant funds (subject to the 10 percent limit) for other related program development and implementation activities.

## Sample Format for Budget Description

|   |  |          |          |          |       |
|---|--|----------|----------|----------|-------|
|   | <b>Project Tasks for Loans</b> (at least 60 percent of amount requested)         |          |          |          |       |
| <b>Budget Categories</b><br>(programmatic costs only) | [Task 1]   | [Task 2] | [Task 3] | [Task 4] | Total |
| Personnel   |  |          |          |          |       |
| Fringe Benefits                                       |  |          |          |          |       |
| Travel  |  |          |          |          |       |
| Equipment <sup>1</sup>                                |  |          |          |          |       |
| Supplies  |  |          |          |          |       |
| Contractual <sup>2</sup>                              |  |          |          |          |       |
| Other (specify) _____                                 |  |          |          |          |       |
| <b>Subtotal:</b>                                      |  |          |          |          |       |
|   | <b>Project Tasks for Subgrants</b> (no more than 40 percent of amount requested) |          |          |          |       |
| <b>Budget Categories</b>                              | [Task 1]   | [Task 2] | [Task 3] | [Task 4] | Total |
| Personnel (programmatic costs only)                   |  |          |          |          |       |
| Fringe Benefits                                       |  |          |          |          |       |
| Travel  |  |          |          |          |       |
| Equipment <sup>1</sup>                                |  |          |          |          |       |
| Supplies  |  |          |          |          |       |
| Contractual <sup>2</sup>                              |  |          |          |          |       |
| Other (specify) _____                                 |  |          |          |          |       |
| <b>Subtotal:</b>                                      |  |          |          |          |       |
| <b>Total</b>  |  |          |          |          |       |
| <b>Cost Share</b>                                     |  |          |          |          |       |

<sup>1</sup> EPA defines equipment as items that cost \$5,000 or more with a useful life of more than one year. Items costing less than \$5,000 are considered supplies. Generally, equipment is not required for RLF grants.

<sup>2</sup> Applicants must comply with the procurement procedures contained in 40 CFR 31.36, or for non-profits, with 40 CFR 30.40.

- A. Community Need (a maximum of 15 points may be received for this criterion)
1. Provide a detailed description of the target community that the project(s) will benefit. Include demographic information for the target community and indicators, such as the poverty rate, unemployment rate, special community situations (e.g., population size), or other environmental justice factors that support community need relating directly to this project (e.g., low-income and/or minority communities; sensitive populations, such as children and pregnant women; or communities disproportionately impacted by environmental factors). Identify the source for this information.
  2. Explain how the targeted community will benefit from this grant.
  3. Characterize the impact of brown fields on your community (or communities) by describing the extent of brownfields (e.g., size, number, location) and the economic, health, and/or environmental impacts of the brownfields.
- B. Description of Target Market for RLF Loans and Subgrants (a maximum of 10 points may be received for this criterion)
1. If you have not identified particular borrowers or subgrantees, describe your target market, including the types of borrowers and subgrantees (for example, small businesses, developers, local governments) and types of sites (for example, single property, multiple properties, geographic area).
  2. If you plan to award subgrants under the RLF, describe how you will take the following into consideration<sup>3</sup>:
    - a. The extent to which the subgrant will facilitate the creation of, preservation of, or addition to a park, greenway, undeveloped property, recreational property, or other property used for nonprofit purposes;

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<sup>3</sup>RLF cooperative agreement recipients must take these into consideration when awarding a subgrant.

- b. The extent to which the subgrant will meet the needs of a community that has an inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community;
  - c. The extent to which a subgrant will facilitate the use or reuse of existing infrastructure; and
  - d. The benefit of promoting the long-term availability of funds from a revolving loan fund for brownfield remediation.
- C. Business Plan (a maximum of 10 points may be received for this criterion)
- 1. Describe your anticipated loan structure (amount, interest, time frame for repayment).
  - 2. Describe your advertising plan and any other redevelopment incentives (for example, TIFs, tax incentives, tax credits, state funding programs) that may be offered as part of a package to assist with promoting the RLF program.
  - 3. Describe how your proposal will promote the long-term availability of funds from a revolving loan fund. If you are planning to provide cleanup subgrants using your RLF grant, describe how this will affect the long-term availability of your revolving loan fund.
  - 4. Describe how you will make full and effective use of the RLF within the grant period. Include in your discussion an implementation schedule and time line for your use of the RLF funds.
- D. Sustainable Reuse of Brownfields/Development Potential (a maximum of 10 points may be received for this criterion)
- 1. Describe your “sustainable development” strategy for the site(s) or targeted area(s) (i.e., how your plans for reuse of the site(s) or targeted area(s) will simultaneously enhance your community’s social, economic, and environmental well being).
  - 2. Describe your specific plans to ensure that, after cleanup, the site(s) or targeted area(s) will be reused in a manner that leads to environmental improvement through reductions in pollution and resource consumption. Strategies to do so may include, for example, green building, smart growth, clean energy production, eco-industrial development, native landscaping, alternative stormwater management, and/or others.

3. Describe how this project(s) will stimulate economic development while responding to community needs, including the creation of jobs, capital investment, and increases to the local tax base.
  4. Explain how your community is working to prevent the creation of future brownfields.
  5. How does your proposed reuse(s) and your ongoing efforts to prevent the creation of future brownfields fit into your community's master plan, economic development plan/activities, other relevant plans/activities, and your ongoing efforts to redevelop brownfields?
- E. Creation and/or Preservation of Greenspace/Open Space (a maximum of 5 points may be received for this criterion)
1. Describe the extent to which the grant would facilitate the creation of, preservation of, or addition to a park, greenway, undeveloped property, recreational property, or other property used for nonprofit purposes.
- F. Reuse of Existing Infrastructure (a maximum of 5 points may be received for this criterion)
1. Describe whether the project will use existing infrastructure (e.g., existing roads, rail/bus/subway services, buildings, utility services, sidewalks/pedestrian trails, recreational services, landscaping, neighborhood centers/institutions) or require its expansion.
- G. Community Involvement (a maximum of 15 points may be received for this criterion)
1. Discuss your plan for involving the local community (e.g., neighborhood organizations, citizens' groups, borrowers, redevelopers, and other stakeholders) in cleanup decisions or reuse planning.
  2. Describe your efforts and/or plans to develop partnerships at the local, state, and/or tribal level with other stakeholders to ensure appropriate and sustainable cleanup and redevelopment of brownfields.
  3. Describe the specific means by which you will communicate the progress of your project to citizens, including plans for communicating in languages indigenous to the community.
  4. Provide a list of the community-based organizations involved and a contact person, phone number, and a brief description of the organization's activities and representation

(these organizations may include, but are not limited to, local citizen groups, environmental organizations, civic organizations, local business groups and institutions, educational institutions, and local labor organizations).

*Note: EPA may conduct reference checks to ensure that organizations identified are supportive and involved with the brownfields project. EPA encourages early community notification and continuing community involvement.*

H. Reduction of Threats to Human Health and the Environment (a maximum of 10 points may be received for this criterion)

1. Describe how the funds will be used to address/facilitate the identification and/or reduction of threats to human health and the environment within the target area (including cancer, asthma, or birth defects) that may be associated with exposure to hazardous substances, pollutants, contaminants, or petroleum.
2. Describe whether you are working with your state or tribal environmental authority and/or local public health department to ensure that public health issues are considered during the redevelopment process.

I. Leveraging of Additional Resources (a maximum of 5 points may be received for this criterion)

1. Describe the financial needs for each phase of the project (cleanup and redevelopment), if known.
2. Identify the funds (e.g., general revenues, tax increment financing (TIF), staff time/in-kind) that your agency/organization has committed or will commit to meet the needs described above.
3. Describe all other funding sources (federal, state, nonprofit, or private) that will be committed to fill in any remaining funding gaps to ensure the success of this project.

J. Ability to Manage Grants/Management Structure (a maximum of 10 points may be received for this criterion)

1. Describe your history of managing federal funds generally. You must identify and provide information regarding the status of any adverse audit findings from an OMB Circular A-133 audit, an audit conducted by a federal, state, tribal, or local government inspector general or similar organization, or audits conducted by the U.S. General Accounting Office. You also must note whether you are, or have previously been,

required to comply with special “high risk” terms and conditions under agency regulations implementing OMB Circular A-102.

2. Provide your plan for managing the loan fund to ensure that it is managed in accordance with prudent lending practices. Include information on the qualifications of staff and institutions the applicant intends to use for financial, analytical, legal, and record keeping activities to ensure that the loan fund is managed in accordance with prudent lending practices.
3. If you plan to acquire any fund management expertise, describe the relationship between the potential cooperative agreement recipient and the institution or individual and the type of agreement (e.g., contract<sup>4</sup> or subgrant<sup>5</sup>) that is planned.
4. If you are, or have been, a recipient of an EPA Brownfields cooperative agreement(s), provide information regarding your compliance with quarterly progress reports, brownfields reporting measures, and annual financial status reporting.
5. If you are a current recipient of an EPA Brownfields cooperative agreement(s), indicate the year of award and amount of funds remaining.
6. If you are a current recipient of an EPA Brownfields cooperative agreement(s), highlight significant accomplishments generated through the use of the funds.

## Cleanup Grant Criteria

Provide responses to the following threshold and ranking criteria if you are applying for cleanup grant funding. Threshold criteria are pass/fail criteria. If your responses do not meet the threshold criteria, the ranking criteria will not be evaluated.

*Note: One eligible entity may apply for up to 5 sites, at up to \$200,000 per site. Each site will be evaluated separately and funding decisions will be independent for each site. If a site does not pass the threshold criteria, an applicant **may not substitute other sites.***

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<sup>4</sup>Note, cooperative agreement recipients must comply with 40 CFR 31.36 when entering into procurement contracts with RLF grant funds and 40 CFR 31.37 when issuing subgrants with RLF grant funds. Nonprofit organizations receiving RLF loans/subgrants and cleanup grants must comply with 40 CFR Part 30 when entering into procurement contracts with RLF grant funds.

<sup>5</sup>Note, cooperative agreement recipients cannot award subgrants to for-profit organizations.

## Threshold Criteria for Cleanup Grants

*Note: For all threshold criterion, EPA may seek further clarification of responses, if needed, during the selection review process.*

### A. Applicant Eligibility

1. Describe how you are an eligible entity for the grants for which you are applying. Refer to the description of applicant eligibility in the sections *What are Brownfields?* and *Who Can Apply?*.

*Note: In order to receive a cleanup grant, the applicant **must own** the property for which they are applying by the time the grant is awarded. For the purposes of these guidelines, the term “own” means fee simple title.*

### B. Community Notification

1. Describe how the community was notified of the preparation and submission of **this proposal**. Demonstrate that you notified the community of **this proposal** and provided sufficient opportunity for **public comment** prior to submitting this proposal. This may include putting a notice of availability in the local newspaper or other local media asking for public comment. Please do not include prior notices from previous grant competitions. Notifications must be current and related to this specific proposal being submitted for consideration. Failure to do this will result in failure of this application.

### C. Site Eligibility and Property Ownership Eligibility

For each site, provide the following:

1. List the site name and address and describe its operational history, environmental concerns, and its current site use and activity.
2. If you determine that the site is not eligible for funding without a property-specific determination, then you will need to apply for a property-specific determination. To apply for a property-specific determination, attach the information requested in *Appendix 4, Section 4.1*.

*Note: EPA may use available information to verify that the site is eligible for funding.*

3. Identify how the site became contaminated and, to the extent possible, describe the nature and extent of the contamination.

4. Explain the phase of assessment that has been completed to date. (Note: A minimum of a preliminary assessment (e.g., Phase I) must be completed in order to apply for this funding.) If additional assessment work is needed, please explain:
  - a. How much assessment is remaining?
  - b. What is the estimated cost of the remaining assessment?
  - c. What is the source of funds to pay for the remaining assessment?
  - d. What is the schedule for completing the assessment?
5. Describe your approach for working with your state voluntary cleanup program or other relevant response program, if appropriate.
6. Identify known ongoing or anticipated environmental enforcement actions related to the brownfield site for which funding is sought. The applicant should demonstrate their relationship, if any, to the contamination or hazardous waste at the site by describing any inquiries or orders from federal, state, or local government entities that the applicant is aware of regarding the responsibility of any party for the contamination or hazardous waste at the site. The information provided in this section will be verified, and EPA will conduct an independent review of information related to the applicant's responsibility for the contamination or hazardous waste at the site.
7.
  - a. Describe how you took ownership of the site (e.g., tax foreclosure, purchase, donation, eminent domain) and date of acquisition. If you have not yet taken ownership of the site, describe how you will take ownership of the site prior to award;
  - b. identify whether or not all disposal of hazardous substances at the site occurred before you acquired the property;
  - c. describe how, prior to taking ownership, you performed all appropriate inquiry into the previous ownership and uses of the property;
  - d. describe whether you are responsible for any of the environmental concerns at the site;
  - e. describe if you, in any way, are potentially liable, or affiliated with any other person who is potentially liable, for contamination at the site;
  - f. identify if you have any direct and indirect familial relationship or any contractual, corporate, or financial relationships with a potentially liable entity; and
  - g. describe the steps which have been taken with regard to the hazardous substances or contamination at the site.

In addition to the site eligibility threshold criteria discussed in #7 above, applicants should also be aware that in order to maintain their status as an eligible entity certain continuing obligations apply. For example: grantees must comply with land use restrictions and institutional controls; take reasonable steps with respect to the hazardous substances on the property; cooperate, assist

and allow access to authorized representatives; and comply with CERCLA information requests and subpoenas and provide legally required notices. For more information on the obligations of owners of contaminated property, please see EPA's *Common Elements Reference Sheet* at <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/common-elem-ref.pdf>.

#### Petroleum Sites

8. If the site is contaminated with petroleum, you must provide appropriate documentation with your proposal that your state or EPA has determined:
  - a. that the site is of “relatively low risk” compared with other “petroleum-only” sites in the state;
  - b. that there is “no viable responsible party” legally capable of satisfying obligations under Federal or state law to assess, investigate, or clean up the site;
  - c. that funding for the site will be used by a party that is not potentially liable for the petroleum contamination to assess, investigate, or clean up the site; and
  - d. that the site is not subject to a corrective action order under the Resource Conservation and Recovery Act (RCRA) §9003(h).

#### D. Cleanup Authority and Oversight Structure

1. Describe how you will oversee the cleanup at the site. Indicate whether you plan to enroll in a state or tribal voluntary response program. If you do not plan to enroll in a state or tribal voluntary response program, provide a description of the technical expertise you have to manage the cleanup and/or whether you plan to acquire additional technical expertise. If you do plan to acquire additional technical expertise, discuss how, consistent with 40 CFR 31.36 (for eligible government entities) or 40 CFR Part 30 (for nonprofit organizations), you will ensure that this technical expertise is in place prior to beginning cleanup activities.
2. Cleanup response activities often impact adjacent or neighboring properties. For example, access to neighboring properties may be necessary to conduct the cleanup, perform confirmation sampling, or monitor offsite migration of contamination. If this type of access is needed, provide your plan to acquire access to the relevant property.

#### E. Cost Share

Cleanup grant recipients are required by the new Brownfields Law to provide a 20 percent cost share. This cost share is calculated as 20 percent of the total federal cleanup funds awarded. For example, if you are applying for \$200,000 of federal cleanup funds, you must provide a cost share of an additional \$40,000. The cost share may be in the form of a contribution of money, labor, material, or services from a non-federal source. If the cost share is in the form of

contribution of labor, material, or other services, it must be incurred for an *eligible and allowable expense* under the grant and not for ineligible expenses, such as administrative costs (see *Appendix 2* for a discussion of prohibited costs).

Cleanup grant applicants may petition EPA to waive the cost share requirement if it would place an undue hardship on the eligible entity. EPA will consider hardship waiver requests on a case-by-case basis and will approve such requests on a limited basis. Undue hardship may be defined as bankruptcy or such other indicator of distress, including low per-capita income, unemployment rate above national average, or unemployment or economic adjustment problems resulting from severe short-term or long-term changes in economic conditions.

1. Describe your plans for providing the cost share as required for this cleanup program grant. If you are requesting a hardship waiver of the cost share, provide an explanation for the basis of your request as part of your proposal.
- F. Letter from the State or Tribal Environmental Authority
1. For an applicant other than a state or tribal environmental authority, provide a letter from the appropriate state or tribal environmental authority acknowledging that the applicant plans to conduct cleanup activities and is planning to apply for Federal grant funds. If you are applying for multiple grant programs, you need only submit one letter acknowledging the relevant grant activities. *Provide as an attachment to each proposal.* Please note that general correspondence and documents evidencing state involvement with the project (i.e., state enforcement orders or state notice letters) are NOT acceptable.

## Ranking Criteria for Cleanup Grants

Cleanup Grant Budget (a maximum of 5 points may be received for this criterion)

Provide the proposed budget(s) for your proposal. Provide footnotes to the budget table describing each task. Typical tasks would include “Community Involvement,” “Site Cleanup,” and “Cleanup Planning.” It must reflect your cost share. The budget(s) should show the distribution of funds, including cost estimates for each of the proposed activities.

**Note that you must provide separate budgets for funds intended for use on petroleum-contaminated sites and funds intended for use on sites contaminated by hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum).**

A **local government** may use up to 10 percent of its grant funds for monitoring the health of populations exposed to one or more hazardous substances, pollutants, or contaminants from a brownfield site and monitoring and enforcement of any institutional control used to prevent human exposure to any hazardous substance, pollutant, or contaminant from a brownfield site.

To effectively oversee assessments and cleanups, local governments may use grant funds (subject to the 10 percent limit) for other related program development and implementation activities.

### Sample Format for Budget Description

|   | Project Tasks |          |          |          |       |
|---|---------------|----------|----------|----------|-------|
| <b>Budget Categories</b><br>(programmatic costs only)   | [Task 1]      | [Task 2] | [Task 3] | [Task 4] | Total |
| Personnel   |               |          |          |          |       |
| Fringe Benefits   |               |          |          |          |       |
| Travel  |               |          |          |          |       |
| Equipment <sup>1</sup>  |               |          |          |          |       |
| Supplies  |               |          |          |          |       |
| Contractual <sup>2</sup>  |               |          |          |          |       |
| Other (specify)_____  |               |          |          |          |       |
| <b>Total</b>  |               |          |          |          |       |
| <b>Cost Share</b>   |               |          |          |          |       |
| <sup>1</sup> EPA defines equipment as items that cost \$5,000 or more with a useful life of more than one year. Items costing less than \$5,000 are considered supplies.<br><sup>2</sup> Applicants must comply with the procurement procedures contained in 40 CFR 31.36, or for non-profits, with 40 CFR 30.40. |               |          |          |          |       |

A. Community Need (a maximum of 15 points may be received for this criterion)

1. Provide a detailed description of the target community that the project(s) will benefit. Include demographic information for the target community and indicators such as the poverty rate, unemployment rate, special community situations (e.g., population size), or other environmental justice factors that support community need relating directly to this project (e.g., low-income and/or minority communities; sensitive populations, such as children and pregnant women; or communities disproportionately impacted by environmental factors). Identify the source for this information.

2. Explain how the targeted community will benefit from this grant.
  3. Characterize the impact of brownfields on your community (or communities) by describing the extent of brownfields (e.g., size, number, location) and the economic, health, and/or environmental impacts of the brownfields.
- B. Sustainable Reuse of Brownfields/Development Potential** (a maximum of 15 points may be received for this criterion)
1. Describe your “sustainable development” strategy for the site(s) or targeted area(s) (i.e., how your plans for reuse of the site(s) or targeted area(s) will simultaneously enhance your community’s social, economic, and environmental well being).
  2. Describe your specific plans to ensure that, after cleanup, the site(s) or targeted area(s) will be reused in a manner that leads to environmental improvement through reductions in pollution and resource consumption. Strategies to do so may include, for example, green building, smart growth, clean energy production, eco-industrial development, native landscaping, alternative stormwater management, and/or others.
  3. Describe how this project(s) will stimulate economic development while responding to community needs, including the creation of jobs, capital investment, and increases to the local tax base.
  4. Explain how your community is working to prevent the creation of future brownfields.
  5. How does your proposed reuse(s) and your ongoing efforts to prevent the creation of future brownfields fit into your community’s master plan, economic development plan/activities, other relevant plans/activities, and your ongoing efforts to redevelop brownfields?
- C. Creation and/or Preservation of Greenspace/Open Space** (a maximum of 5 points may be received for this criterion)
1. Describe the extent to which the grant would facilitate the creation of, preservation of, or addition to a park, greenway, undeveloped property, recreational property, or other property used for nonprofit purposes.
- D. Reuse of Existing Infrastructure** (a maximum of 5 points may be received for this criterion)
1. Describe whether the project will use existing infrastructure (e.g., existing roads, rail/bus/subway services, buildings, utility services, sidewalks/pedestrian trails,

recreational services, landscaping, neighborhood centers/institutions) or require its expansion.

- E. Community Involvement (a maximum of 15 points may be received for this criterion)
1. Discuss your plan for involving the local community (e.g., neighborhood organizations, citizens' groups, borrowers, redevelopers, and other stakeholders) in cleanup decisions or reuse planning.
  2. Describe your efforts and/or plans to develop partnerships at the local, state, and/or tribal level with other stakeholders to ensure appropriate and sustainable cleanup and redevelopment of brownfields.
  3. Describe the specific means by which you will communicate the progress of your project to citizens, including plans for communicating in languages indigenous to the community.
  4. Provide a list of the community-based organizations involved and a contact person, phone number, and a brief description of the organization's activities and representation (these organizations may include, but are not limited to, local citizen groups, environmental organizations, civic organizations, local business groups and institutions, educational institutions, and local labor organizations).

*Note: EPA may conduct reference checks to ensure that organizations identified are supportive and involved with the brownfields project. EPA encourages early community notification and continuing community involvement.*

- F. Reduction of Threats to Human Health and the Environment (a maximum of 15 points may be received for this criterion)
1. Describe how the funds will be used to address/facilitate the identification and/or reduction of threats to human health and the environment within the target area (including cancer, asthma, or birth defects) that may be associated with exposure to hazardous substances, pollutants, contaminants, or petroleum.
  2. Describe whether you are working with your state or tribal environmental authority and/or local public health department to ensure that public health issues are considered during the redevelopment process.
  3. Describe the proposed cleanup plan for the site and the estimated costs to complete the cleanup.

- G. Leveraging of Additional Resources (a maximum of 15 points may be received for this criterion)
1. Describe the financial needs for each phase of the project (cleanup and redevelopment), if known.
  2. Identify the funds (e.g., general revenues, tax increment financing (TIF), staff time/in-kind) that your agency/organization has committed or will commit to meet the needs described above.
  3. Describe all other funding sources (federal, state, nonprofit, or private) that will be committed to fill in any remaining funding gaps to ensure the success of this project.
- H. Ability to Manage Grants (a maximum of 10 points may be received for this criterion)
1. Describe your ability to manage this grant or describe the system(s) you have in place to hire the requisite expertise.
  2. Describe your history of managing federal funds generally. You must identify and provide information regarding the status of any adverse audit findings from an OMB Circular A-133 audit, an audit conducted by a federal, state, tribal, or local government inspector general or similar organization, or audits conducted by the U.S. General Accounting Office. You also must note whether you are, or have previously been, required to comply with special “high risk” terms and conditions under agency regulations implementing OMB Circular A-102.
  3. If you are, or have been, a recipient of an EPA Brownfields cooperative agreement(s), provide information regarding your compliance with quarterly progress reports, brownfields reporting measures, and annual financial status reporting.
  4. If you are a current recipient of an EPA Brownfields cooperative agreement(s), indicate the year of award and amount of funds remaining.
  5. If you are a current recipient of an EPA Brownfields cooperative agreement(s), highlight significant accomplishments generated through the use of the funds.

## Appendix 1. Regional Brownfields Coordinators

| <i>REGION &amp; STATES</i>               |   | <i>ADDRESS, PHONE NUMBER, FAX, E-MAIL</i>   |
|--|---|---|
| <b>EPA Region 1<br/>Lynne Jennings</b>   | <b>CT, ME, MA,<br/>NH, RI, VT</b>             | One Congress Street<br>Boston, MA 02114-2023<br>Phone (617) 918-1210 Fax (617) 918-1291<br>jennings.lynne@epa.gov   |
| <b>EPA Region 2<br/>Larry D’Andrea</b>   | <b>NJ, NY, PR, VI</b>                         | 290 Broadway<br>18th Floor<br>New York, NY 10007<br>Phone (212) 637-4314 Fax (212) 637-4360<br>dandrea.larry@epa.gov  |
| <b>EPA Region 3<br/>Jeff Barnett</b>     | <b>DE, DC, MD,<br/>PA, VA, WV</b>             | 1650 Arch Street<br>Philadelphia, PA 19103<br>Phone (215) 814-3246 Fax (215) 814-5518<br>barnett.jeff@epa.gov   |
| <b>EPA Region 4<br/>Mickey Hartnett</b>  | <b>AL, FL, GA,<br/>KY, MS, NC,<br/>SC, TN</b> | Atlanta Federal Center<br>61 Forsyth Street<br>Atlanta, GA 30303<br>Phone (404) 562-8661 Fax (404) 562-8628<br>hartnett.mickey@epa.gov                                      |
| <b>EPA Region 5<br/>Deborah Orr</b>      | <b>IL, IN, MI,<br/>MN, OH, WI</b>             | 77 West Jackson Boulevard<br>Chicago, IL 60604-3507<br>Phone (312) 886-7576 Fax (312) 886-7190<br>orr.deborah@epa.gov   |
| <b>EPA Region 6<br/>Dorothy Crawford</b> | <b>AR, LA, NM,<br/>OK, TX</b>                 | First Interstate Bank Tower at Fountain Place<br>1445 Ross Avenue, Suite 1200<br>Dallas, TX 75202-2733<br>Phone (214)665-2739 Fax (214)665-6660<br>crawford.dorothy@epa.gov |
| <b>EPA Region 7<br/>Susan Klein</b>      | <b>IA, KS, MO,<br/>NE</b>                     | 901 N. 5th Street<br>Kansas City, MO 66101<br>Phone (913) 551-7786 Fax (913) 551-8688<br>klein.susan@epa.gov  |

|  |                                   |  |
|--|-----------------------------------|--|
| <b>EPA Region 8<br/>Kathie Atencio</b>   | <b>CO, MT, ND,<br/>SD, UT, WY</b> | 999 18th Street, Suite 300 (EPR-B)<br>Denver, CO 80202-2406<br>Phone (303) 312-6803 Fax (303) 312-6071<br>atencio.kathie@epa.gov |
| <b>EPA Region 9<br/>Jim Hanson</b>       | <b>AZ, CA, HI,<br/>NV, AS, GU</b> | 75 Hawthorne Street, SFD 1-1<br>San Francisco, CA 94105<br>Phone (415) 972-3188 Fax (415) 947-3528<br>hanson.jim@epa.gov         |
| <b>EPA Region 10<br/>Tim Brincefield</b> | <b>AK, ID, OR,<br/>WA</b>         | 1200 Sixth Avenue (ECL-112)<br>Seattle, WA 98101<br>Phone (206) 553-2100 Fax (206) 553-0124<br>brincefield.timothy@epa.gov       |

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## Appendix 2. Prohibitions on Use of Funds

Grant funds may not be used for the payment of:

- A penalty or fine.
- A federal cost-share requirement (for example, a cost share required by other federal funds).
- An administrative cost (see below).
- A response cost at a brownfield site for which the recipient of the grant or loan is potentially liable under CERCLA §107.
- A cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the cleanup.
- Unallowable costs (e.g., lobbying and fund raising) under OMB Circulars A-21, A-87, or A-122, as applicable.

### Administrative Cost Prohibition

The Brownfields Law prohibits the use of any “part of a grant or loan” for the payment of an administrative cost. In implementing this prohibition, EPA has made a distinction between prohibited administrative costs and eligible programmatic costs.

- A. **Administrative Costs.** Prohibited administrative costs are direct costs, including those in the form of salaries, benefits, contractual costs, supplies, and data processing charges, incurred to comply with most provisions of the *Uniform Administrative Requirements for Grants* contained in 40 CFR Part 30 or 40 CFR Part 31. Direct costs for grant administration are ineligible even if the grantee or subgrantee is required to carry out the activity under the grant agreement. Prohibited administrative costs also are all indirect costs under OMB Circulars A-21, A-87, and A-122, and Subpart 31.2 of the *Federal Acquisition Regulation*.
- B. **Statutory Exclusions.** The administrative cost prohibition does not apply to direct costs for:
  - 1. Investigation and identification of the extent of contamination;
  - 2. Design and performance of a response action; or
  - 3. Monitoring of a natural resource.
- C. **Programmatic Costs.** EPA has determined that the administrative cost prohibition does not apply to “programmatic” costs, i.e., costs for activities that are integral to achieving

the purpose of the grant, even if EPA considered the costs to be “administrative” under the prior brownfields program. For example, the prohibition does not apply, under a revolving loan fund grant, to costs incurred in making loans (such as the costs of loan processing, legal fees, and professional services) or overseeing the borrower’s activities to ensure compliance with relevant and appropriate requirements of the *National Contingency Plan* (see 40 CFR §300.700 *et seq.*). These costs are programmatic, not administrative. Direct costs, as defined in the applicable OMB Cost Principle Circular, for the following programmatic activities are not subject to the administrative cost prohibition:

1. In the case of grants for site characterization and assessment, expenses for inventorying, characterizing, assessing, and conducting planning related to brownfield sites.
2. In the case of grants for capitalization of revolving loan funds:
  - (a) expenses for making and managing loans;
  - (b) expenses, including financial management expenses, for operating the revolving fund; and
  - (c) expenses for making and managing subgrants under CERCLA §104(k)(3)(B)(ii).
3. In the case of grants for direct use by eligible entities and nonprofit organizations in remediation of brownfield sites under CERCLA §104(k)(3)(A)(ii), expenses for site remediation activities.
4. In the case of grants for implementation of brownfields programs under CERCLA §104(k)(6), expenses for providing training, research, and technical assistance.
5. Costs incurred for complying with procurement provisions of 40 CFR Part 30 and 31 are considered eligible programmatic costs only if the procurement contract is for services or products that are direct costs for performing activities specified above in Section B, “Statutory Exclusions,” or Section C, “Programmatic Costs.”
6. Costs for performance and financial reporting required under 40 CFR 30.51 and 30.52, and 40 CFR 31.40 and 31.41 are eligible programmatic costs. Performance and financial reporting are essential programmatic tools for both the recipient and EPA to ensure that grants are carried out in accordance with statutory and regulatory requirements.

Eligible programmatic costs can include expenses for travel, training, equipment, supplies, reference materials, and contractual support if those costs are reasonable and allocable to tasks specified in a grantee’s approved scope of work for carrying out the activities described in Section B, “Statutory Exclusions,” or Section C, “Programmatic Costs.”

**DRAFT 8/25/03**

**FOR DISCUSSION PURPOSES ONLY–NOT EPA POLICY**

Eligible programmatic costs may be used to help meet the RLF capitalization grant and direct cleanup grant recipients' 20 percent cost share. Prohibited administrative costs may not be used to meet recipients' cost share.

For further information on these prohibitions, contact your Regional Brownfields Contact listed in *Appendix 1*.

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## Appendix 3. Guidance on Sites Eligible for Brownfields Funding Under CERCLA §104(k)

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### 3.1 Introduction

The information provided in this appendix should be used by applicants as a guide in determining the eligibility of any property for brownfields funding. The following guidance provides EPA's preliminary views on the types of sites that may be appropriate for funding. EPA is providing this information as guidance to applicants to assist you in developing your proposals for funding under CERCLA §104(k). This guidance provides preliminary interpretations and policy guidance that EPA intends to use as a guide when we exercise our authority to award funds under §104(k). However, we believe that further development may impact our view of these provisions, and we will reevaluate our preliminary views in light of the factual information we receive with each proposal, as well as over the course of implementing the §104(k) grant program.

This guidance does not impose legally-binding requirements. Applicants are free to raise questions about the appropriateness of these preliminary views, and EPA will consider whether these preliminary views are appropriate at that time. Any decision by EPA to apply this preliminary guidance will be made based on the applicable statutory provisions.

### 3.2 General Definition of Brownfield Site

**The new Brownfields Law defines a "Brownfield Site" to mean:**

"...real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant."

Brownfield sites include all "real property," including residential, as well as commercial and industrial properties.

### 3.3 Additional Areas Specifically Eligible for Funding

The Brownfields Law identifies three types of properties that are specifically eligible for funding:

1. Sites contaminated by *controlled substances*.
2. Sites contaminated by *petroleum or a petroleum product*.
3. *Mine-scarred lands*.

See below for guidance on determining the scope of each of these three types of sites. Applicants should identify properties included within their funding proposals that fall within the scope of any of the following three areas.

### 3.3.1 Contamination by Controlled Substance

Sites eligible for funding include real property, including residential property, that is contaminated by a controlled substance. A “controlled substance” is defined under the Controlled Substances Act as “a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of this title (21 USC Section 812). The term does not include distilled spirits, wine, malt beverages, or tobacco...”

For example, sites eligible for brownfields funding may include private residences, formerly used for the manufacture and/or distribution of methamphetamines or other illegal drugs where there is a presence or potential presence of controlled substances or pollutants, contaminants, or hazardous substances (*e.g.*, red phosphorous, kerosene, acids).

### 3.3.2 Contamination by Petroleum or Petroleum Product

Petroleum-contaminated sites (except those sites receiving LUST trust fund monies) may be eligible for brownfields funding if the applicant can provide information that will enable EPA or the state to make certain statutory determinations, as described in *Appendix 4*. (EPA will make the statutory determinations for tribes). Petroleum-contaminated sites (or portions of properties contaminated with petroleum) that are eligible for brownfields funding include certain sites that are not underground storage tank (UST) sites. Petroleum is defined under CERCLA as “crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under that section.”

For a petroleum contaminated site(s) that otherwise meets the definition of a brownfields site to be eligible for funding, EPA **or the state must determine**:

1. the site is of “relatively low risk” compared with other “petroleum-only” sites in the state; and
2. there is no viable responsible party; and
3. funding will be used by a party that is not potentially liable for the petroleum contamination to assess, investigate, or clean up the site.

In addition, petroleum-contaminated sites must not be subject to a corrective action order under the Resource Conservation and Recovery Act (RCRA) §9003(h).

With the exception of tribes, applicants must first approach their state for these determinations. If the applicant is unable to obtain determinations from a state in time to meet the application deadline, the applicant may request that EPA consider the information provided to make the determination as part of its application.

In the case of proposals that include requests for an assessment or direct cleanup grant to address petroleum-contaminated sites, applicants must provide information in their proposal indicating whether the site meets each of the criteria listed above. If EPA awards an applicant a revolving loan fund grant, the state or EPA must make the same determinations for site(s) that will be cleaned up under a loan or subgrant. These criteria are explained below.

**Note: A determination by the Administrator or a state under CERCLA section 101(39)(D) for the purpose of brownfields funding does not release any party from obligations under the Resource Conservation and Recovery Act, the Clean Water Act, the Oil Pollution Act, the Safe Drinking Water Act, the Clean Air Act, or any other federal or state statute or regulation, or under the common law.**

“Relatively Low Risk”:

Applicants whose brownfield site(s) include properties or portions of properties contaminated with petroleum or petroleum products must provide information in their proposal indicating that the property represents a relatively low risk (compared to other petroleum-only sites). Our preliminary view is that the following types of petroleum-contaminated sites are high risk sites, or are not of “relatively low risk.” Our preliminary view is that petroleum-contaminated sites that do not fall within the scope of high risk sites will be considered to be “relatively low-risk” sites.

- “High risk” sites currently being cleaned up using LUST trust fund monies.
- Any petroleum-contaminated site that currently is subject to a response under the Oil Pollution Act (OPA).

Note: Any site that does not fall under any of the provisions listed above would be considered to be of relatively low risk for purposes of determining eligibility for a brownfields grant.

“A Site for Which There is No Viable Responsible Party”

[RESERVED]

“Cleaned Up by a Person Not Potentially Liable”:

Brownfields funding may be awarded to eligible entities for the assessment and cleanup of petroleum-contaminated sites in those instances where the eligible entity has not caused or contributed to the petroleum contamination. When responding to the threshold criteria in their funding proposals, applicants are asked to indicate whether or not the applicant owns the site or sites for which funding is requested and describe whether the applicant caused or contributed to the petroleum contamination or other environmental concerns at the site(s).

“Is not subject to any order issued under §9003(h) of the Solid Waste Disposal Act”:

Proposals that include requests for an assessment or direct cleanup grant to address petroleum-contaminated sites must not be subject to a corrective action order under a Resource Conservation and Recovery Act (RCRA) §9003(h). If EPA awards an applicant a revolving loan fund grant, the State or EPA must make the same determination for site(s) that will be cleaned up under a loan or subgrant.

### **3.3.3 Mine-scarred Lands**

Under the new Brownfields Law, mine-scarred lands are eligible for brownfields funding. Applicants for brownfields funding that include properties within their proposal that they believe fall within the following definition of mine-scarred lands are encouraged to provide in the site description section of their proposals information identifying and describing such properties.

EPA’s preliminary view is that “mine-scarred lands” are those lands, associated waters, and surrounding watersheds where extraction, beneficiation, or processing of ores and minerals (including coal) has occurred. For the purposes of this section, the definition of extraction, beneficiation, and processing is the definition found at 40 CFR 261.4(b)(7).

Mine-scarred lands include abandoned coal mines and lands scarred by strip mining.

Examples of coal mine-scarred lands may include, but are not limited to:

- abandoned surface coal mine areas,
- abandoned deep coal mines,
- abandoned coal processing areas,
- abandoned coal refuse areas,
- acid or alkaline mine drainage, and
- associated waters affected by abandoned coal mine (or acid mine) drainage or runoff, including stream beds and adjacent watersheds.

Examples of non-coal hard rock mine-scarred lands may include, but are not limited to:

- abandoned surface and deep mines,
- abandoned waste rock or spent ore piles,
- abandoned roads constructed wholly or partially of waste rock or spent ore,
- abandoned tailings, disposal ponds, or piles,
- abandoned ore concentration mills,
- abandoned smelters,
- abandoned cyanide heap leach piles,
- abandoned dams constructed wholly or partially of waste rock, tailings, or spent ore,
- abandoned dumps or dump areas used for the disposal of waste rock or spent ore,
- acid or alkaline rock drainage, and
- waters affected by abandoned metal mine drainage or runoff, including stream beds and adjacent watersheds.

### **3.4 Particular Classes of Sites Not Eligible for Funding or Eligible Only Under Property-specific Determinations**

EPA excludes the following types of facilities from funding eligibility unless the applicant fulfills the requirements for demonstrating that the site meets the criteria for a property-specific determination for funding (see *Appendix 4 Guidance for Requests for Property-Specific Determinations for Funding*). Applicants are encouraged to indicate within the site description section of their proposal if any site or property included within the scope of their funding proposal falls within the scope of any of the categories of sites listed below. When requesting a property-specific determination for funding, applicants should follow the instructions provided in *Appendix 4* for indicating that brownfields funding at such sites will ensure protection of human health and the environment and promote economic development or the creation or preservation of greenspace or recreational areas. (Note: The following discusses limitations on funding particular classes of sites. Many of these limitations reflect policy decisions. Where the limitations are based on statutory provisions, we have noted that.)

Also, please note that in providing funding for brownfield sites, and given that a limited amount of funding is available for brownfields grants, EPA's goal is to not provide brownfields funding to sites where EPA has a planned or ongoing enforcement action. While EPA does not intend that the existence of a planned or ongoing enforcement action will necessarily disqualify a site from receipt of brownfields funding, EPA does believe it is necessary that EPA be aware of the existence of any such action in making funding decisions. As a result, EPA will conduct an investigation to evaluate whether a site is, or will be, subject to an enforcement action under CERCLA or other federal environmental statutes. EPA is requesting that applicants identify ongoing or anticipated environmental enforcement actions related to the brownfield site for which funding is sought.

The Brownfields Law also excludes three types of properties from funding eligibility and does not allow EPA the opportunity to provide funding for these properties after making a property-specific determination. These three types of properties include: 1) sites listed on the NPL, 2) facilities subject to unilateral administrative orders, court orders, administrative orders on consent or judicial consent decrees issued to or entered into by parties under CERCLA, and 3) facilities that are subject to the jurisdiction, custody, or control of the United States government.

#### **Sites Not Eligible for Funding Without a Property-Specific Determination**

1. Facilities subject to planned or ongoing CERCLA removal actions.
2. Facilities that are subject to unilateral administrative orders, court orders, administrative orders on consent or judicial consent decrees or to which a permit has been issued by the United States or an authorized state under the Solid Waste Disposal Act (as amended by the Resource Conservation and Recovery Act (RCRA)), the Federal Water Pollution Control Act (FWPCA), the Toxic Substances Control Act (TSCA), or the Safe Drinking Water Act (SDWA).
3. Facilities subject to corrective action orders under RCRA (sections 3004(u) or 3008(h)) and to which a corrective action permit or order has been issued or modified to require the implementation of corrective measures.
4. Facilities that are land disposal units that have filed a closure notification under subtitle C of RCRA and to which closure requirements have been specified in a closure plan or permit.
5. Facilities where there has been a release of polychlorinated biphenyls (PCBs) and are subject to remediation under TSCA.
6. Portions of facilities for which funding for remediation has been obtained from the Leaking Underground Storage Tank (LUST) Trust Fund.

Guidance regarding the scope of each of the funding restrictions listed above is provided below.

**Sites Not Eligible for Brownfields Funding and Not Eligible for a Property-Specific Determination**

1. Facilities listed (or proposed for listing) on the National Priorities List (NPL).
2. Facilities subject to unilateral administrative orders, court orders, administrative orders on consent, or judicial consent decrees issued to or entered into by parties under CERCLA.
3. Facilities that are subject to the jurisdiction, custody, or control of the United States government. (NOTE: Land held in trust by the United States government for an Indian tribe is eligible for brownfield funding.)

**3.4.1 Facilities Subject to CERCLA Removal Actions**

Properties (including parcels of properties) where there are removal actions may not receive funding, unless EPA makes a property-specific determination of funding eligibility.

EPA's preliminary view is that a removal may be identified by the occurrence of one of the following events, whichever occurs first in time: EPA issues an action memo; EPA issues an EE/CA approval memo; EPA mobilizes on-site; or EPA issues a notice of federal interest to one or more potentially responsible parties (PRP(s)), which in emergencies may be made verbally.

Our preliminary view is that, for the purposes of eligibility to receive brownfields funding, and for no other reason, a removal is complete when the actions specified in the action memorandum are met, or when the contractor has demobilized and left the site (as documented in the "pollution report" or POLREP). Once a removal action is complete, a property is eligible for brownfields funding without having to obtain a property-specific funding determination. Applicants applying for brownfields funding for sites at which removal actions are complete must include documentation of the action being complete with their funding proposal.

Parcels of facilities not affected by removal action at the same property may apply for brownfields funding and may be eligible for brownfields funding on a property-specific basis. Property-specific funding decisions will be made in coordination with the on-scene coordinator (OSC) to ensure that all removals and cleanup activities at the property are conducted in safe and protective manners and to ensure that the OSC retains the ability to address all risks and contamination.

Please note that if a federal brownfields-funded site assessment results in identifying the need for a new removal action, the grantee may continue to expend assessment grant funds on additional assessment activities. However, any additional expenditure of federal brownfield funds and any additional site assessment activities should be conducted in coordination with the OSC for the site.

Any property or site where there are removal actions may be eligible for brownfields funding if a grant or loan applicant can demonstrate that brownfields funding will ensure protection of human health and the environment and promote economic development, or the preservation of green space. EPA will consider providing funding to an eligible entity for assessment or cleanup activities at the site, on a property-specific basis (see guidance on documenting eligibility for property-specific funding determinations provided in *Appendix 4*).

### **3.4.2 Facilities Subject to Unilateral Administrative Orders, Court Orders, Administrative Orders on Consent, or Judicial Consent Decrees Issued to or Entered into by Parties Under CERCLA**

Sites subject to administrative orders, court orders, and consent or judicial consent decrees issued or entered into by parties under the provisions of CERCLA are not eligible for funding, even on a property-specific basis. Therefore, applicants should not include such sites within the scope of their brownfields funding proposals.

### **3.4.3 Facilities Listed (or Proposed for Listing) on the National Priorities List**

CERCLA sites listed on the NPL and sites proposed to be listed on the NPL are not eligible for brownfields funding. In addition, these sites are not eligible for funding on a property-specific basis. Therefore, applicants should not include proposed or listed NPL sites within the scope of brownfields funding proposals.

### **3.4.4 Facilities to which a permit has been issued by the United States or an authorized state under the Solid Waste Disposal Act (RCRA), the Federal Water Pollution Control Act, the Toxic Substances Control Act, or the Safe Drinking Water Act**

Generally, in cases where a property or a portion of a property is permitted under the Resource Conservation and Recovery Act, Section §1321 of the Clean Water Act, the Safe Drinking Water Act, and/or the Toxic Substances and Control Act, the property, or portion of the property, may not receive funding, without a property-specific determination. Therefore, applicants should review the following guidance regarding which types of permitted facilities may not receive funding unless EPA makes a property-specific determination to provide funding. Applicants should note that the exclusion for permitted facilities does not extend to facilities with National Pollutant Discharge Elimination System (NPDES) permits issued under the authorities of the

Federal Water Pollution Control Act, but is limited to facilities issued permits under the authorities of the Oil Pollution Act (*i.e.*, §1321 of FWPCA).

In cases where one or more portions of a property are not eligible for funding, the applicant should identify the specific permit and situation that causes the property to be excluded. In addition, the applicant must include, within the proposal, documentation that federal brownfields funding for the assessment or cleanup of the property will further the goals established for property-specific funding determinations (see attached guidance on property-specific funding determinations).

Any property or site that has been issued a permit under the federal environmental statutes listed above (and in accordance with any additional guidelines provided in *Appendix 4*) may be eligible for brownfields funding if a grant or loan applicant can demonstrate that brownfields funding will ensure protection of human health and the environment and promote economic development or the preservation of greenspace. EPA will consider providing funding to an eligible entity for assessment or cleanup activities at the site, on a property-specific basis (see guidance on documenting eligibility for property-specific funding determinations provided in *Appendix 4*).

In some cases, a facility may not have a permit or order because they are not in compliance with federal or state environmental laws requiring that they obtain a permit or the facility has failed to notify EPA of their regulatory status. Such facilities are not eligible for brownfields funding. For example, a RCRA treatment unit operator is required to obtain a permit and/or notify EPA of its operation. An operator that fails to fulfill those obligations will likely not have a permit or order as EPA will be unaware of their existence. Therefore, it is EPA's preliminary view that such facilities are ineligible to receive brownfields funds as a result of their failure to comply with a basic regulatory requirement. Additional guidance on the eligibility of RCRA-permitted facilities, including facilities under administrative or court orders, including corrective action orders, is provided in *Appendix 4*.

### 3.4.5 RCRA Sites

#### Excluded RCRA Facilities

EPA's preliminary view is that the following types of RCRA facilities ***may not receive funding without a property-specific determination***:

- a. *RCRA-permitted facilities.*
- b. RCRA interim status facilities with administrative orders requiring the facility to conduct corrective action or otherwise address contamination, including facilities with orders issued under the authorities of RCRA §3008(a), §3008(h), §3013, and §7003.

- c. Facilities under court order or under an administrative order on consent or judicial consent decree under RCRA or CERCLA that require the facility to conduct corrective action or otherwise address contamination at the facility.
- d. Land disposal units that have notified EPA or an authorized state of their intent to close and have closure requirements specified in closure plans or permits.

However, if a grant or loan applicant is requesting a grant for property that is excluded, the applicant may still be eligible for a brownfields grant if the applicant can demonstrate that funding will ensure protection of human health and the environment and promote economic development or the preservation of greenspace. EPA will consider providing funding to an applicant for assessment or cleanup activities at such a site on a property-specific basis (see guidance on documenting eligibility for property-specific funding determinations in *Appendix 4*).

#### RCRA Facilities that are Eligible for Funding

EPA's preliminary view is that the following types of RCRA facilities would not fall within the scope of the exclusion and would be eligible for funding:

- a. RCRA interim status facilities that are not subject to any administrative or judicial order or consent decree;
- b. RCRA interim status facilities that are subject to administrative or judicial orders that do **not** include corrective action requirements or any other cleanup provisions (e.g., RCRA §3008(a) orders without provisions requiring the owner/operator to address contamination); and
- c. Parcels of RCRA facilities that are not under the scope of a RCRA permit or administrative or judicial order.

In addition, any property or site that has been issued a permit under RCRA may be eligible for brownfields funding if a grant or loan applicant can demonstrate that brownfields funding will ensure protection of human health and the environment and promote economic development or the preservation of green space. EPA will consider providing funding to an eligible entity for assessment or clean up activities at the site on a property-specific basis (see guidance on documenting eligibility for property-specific funding determinations provided in *Appendix 4*).

**3.4.6 Land disposal units that have filed a closure notification under Subtitle C of RCRA and to which closure requirements have been specified in a closure plan or permit.**

RCRA hazardous waste landfills that have submitted closure notifications, as required under 40 CFR 264.112(d) or 265.112(d), generally will not be funded. This may include permitted facilities that have filed notification of closure and for which EPA and/or an authorized state is proceeding with final closure requirements for the facility. For interim status facilities, this is done through approval of a closure plan submitted with closure notification; for permitted facilities, this is routinely done as a modification to the permit, requested by the facility at the time of closure notification.

Please note that RCRA hazardous waste landfills that have submitted closure notifications may be eligible for brownfields funding if a grant or loan applicant can demonstrate that brownfields funding will ensure protection of human health and the environment and promote economic development or the preservation of green space. EPA will consider providing funding to an eligible entity for assessment or clean up activities at the site on a property-specific basis (see guidance on documenting eligibility for property-specific funding determinations provided in *Appendix 4*).

**3.4.7 Facilities that are subject to the jurisdiction, custody, or control of the United States government.**

Facilities owned by, or under the custody or control of the federal government are not eligible for brownfields funding, even on a property-specific basis. EPA's preliminary view is that this exclusion may not extend to:

- a. Privately-owned, Formerly Used Defense Sites (FUDS);
- b. Privately-owned, Formerly Utilized Sites Remedial Action Program (FUSRAP) properties; and
- c. Other former federal properties that have been disposed of by the U.S. government.

Also note that land held in trust by the United States government for an Indian tribe is not excluded from funding eligibility.

Also note that eligibility for brownfields funding does not alter a private owner's ability to cost recover from the federal government in cases where the previous federal government owner remains liable for environmental damages.

**3.4.8 Sites Contaminated with PCBs**

The Brownfields Law excludes from funding eligibility portions of facilities where there has been a release of PCBs that are subject to remediation under TSCA.

EPA's preliminary view is that all portions of properties *are eligible* for brownfields site assessment grants, except where EPA has initiated an involuntary action with any person to address PCB contamination. Also, it is our preliminary view that all portions of properties *are eligible* for cleanup and RLF grants, except where EPA has an ongoing action against a disposer to address PCB contamination.

Therefore, portions of properties that are excluded from funding eligibility include those portions of properties where:

- There is a release (or disposal) of any waste meeting the definition of "PCB remediation waste" at 40 CFR 761.3; *and*
- At which EPA has initiated an involuntary action with any person to address the PCB contamination. Such involuntary actions could include:
  - Enforcement action for illegal disposal;
  - Regional Administrator's order to characterize or remediate a spill or old disposal (40 CFR 761.50(b)(3));
  - Penalty for violation of TSCA remediation requirements;
  - Superfund removal action; or
  - Remediation required under RCRA §3004(u) or §3004(v).

PCBs may be remediated under any one of the following provisions under TSCA:

- a. Section 761.50(b)(3), the directed characterization, remediation, or disposal action.
- b. Section 761.61(a), the self-implementing provision.
- c. An approval issued under §761.61(c), the risk-based provision.
- d. Section 761.61(b) to the level of PCB quantification (i.e., 1 ppm in soil).
- e. An approval issued under §761.77, the coordinated approval provision.
- f. Section 761.79, the decontamination provision.
- g. An existing EPA PCB Spill Cleanup Policy.
- h. Any future policy or guidance addressing PCB spill cleanup or remediation specifically addressing the remediation of PCBs at brownfield sites.

Note that any portion of a property where EPA has initiated an involuntary action with any person to address PCB contamination and portions of properties where EPA has an ongoing action against a disposer to address PCB contamination may be eligible for brownfields funding if a grant or loan applicant can demonstrate that brownfields funding will ensure protection of human health and the environment and promote economic development or the preservation of green space. EPA will consider providing funding to an eligible entity for assessment or clean up activities at the site on a property-specific basis (see guidance on documenting eligibility for property-specific funding determinations provided in *Appendix 4*).

### 3.4.9 Exclusion of LUST Trust Fund Sites

The Brownfields Law excludes from eligibility for funding (unless EPA makes a property-specific determination for funding) those sites (or portions of properties) for which assistance for response activity has been obtained under Subtitle I of RCRA from the LUST trust fund. EPA's preliminary view is that this provision may exclude:

- a. UST sites where money is being spent on actual assessment and/or cleanup of UST/petroleum contamination.

However, in cases where an UST site is located in a state where the state agency has used LUST trust fund money for state program oversight activities but has not expended LUST trust funds for specific assessment and/or cleanup activities at the site, the site would not necessarily be excluded from eligibility for brownfields funding.

Such sites may receive brownfields funding on a property-specific basis, if it is determined that brownfields funding will protect human health and the environment and the funding will promote economic development or enable the creation of, preservation of, or addition to greenspace (see guidance on documenting eligibility for property-specific funding determinations provided in *Appendix 4*).

***Examples of “excluded” sites (i.e., sites receiving LUST trust fund monies) we would consider to be good candidates to receive brownfields grants or loans:***

- a. All USTfields pilots (50 pilots)
- b. Sites (or portions of properties) where an assessment was completed using LUST trust fund monies and the state has determined that the site is a low-priority UST site and therefore additional LUST money cannot be provided for the cleanup of petroleum contamination, but the site still needs some cleanup and otherwise is a good candidate for economic revitalization.
- c. Sites (or portions of properties) where LUST money was spent for emergency activities, but then the site was determined to be ineligible for further expenditures of LUST trust funds, yet the site needs additional funding for continued assessment and/or cleanup that will contribute to economic revitalization of the site.

## Appendix 4. Guidance for Requests for Property-Specific Determinations for Funding

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#### 4.1 Overview

Grant applicants must determine if any of the properties, or facilities, included in their proposal require a property-specific determination. A list of the categories of facilities that only are eligible for funding via a property-specific determination is provided below.

If an applicant includes within the scope of a grant proposal a facility that requires a property-specific funding determination, the proposal must include, on a separate page, the following information (to the extent this information replicates information requested elsewhere in the proposal, the applicant may directly copy the text to this page):

1. Basic site identification information and eligible entity identification information.
2. The specific circumstance that requires the grantee to request a property-specific determination (from the list in Section 3.4 of Appendix 3).
3. A short explanation of why the site falls within the identified circumstance requiring the property-specific funding determination.
4. An explanation of how providing brownfields funding for the site will meet the criteria necessary for making a property-specific funding determination (see below).
5. The degree to which other funding is or is not available for the assessment or cleanup of the site.
6. A explanation of whether or not the applicant is responsible for the contamination at a site.

The information provided will be used in making a property-specific determination for funding purposes, which will take place during the proposal evaluation process.

#### 4.2 Funding Limitations

Although the statutory definition of “brownfield site” is broad, Congress limited the extent to which brownfields funding may be provided to eligible entities to assess and clean up sites that are being addressed under other federal programs. In addition, the Brownfields Law prohibits the use of grant and loan funds for the payment of response costs at sites for which the funding recipient of the grant or loan is potentially liable under §107 of CERCLA<sup>6</sup>. (See Appendix 2 for additional prohibitions on the use of brownfields funding.)

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<sup>6</sup>Applicants also should note that the Brownfields Law contains other prohibitions on the use of grant and loan monies, including the use of grant and loan monies for paying penalties, administrative costs, federal cost-share requirements, and the cost of complying with any federal law (see §101(k)(4)(B)).

The types of facilities that Congress *excluded from* funding eligibility are listed below. However, certain facilities listed below as excluded from funding eligibility, may still qualify for brownfields funding. The types of facilities marked with an *asterisk (\*)* below are eligible for brownfields funding if a property-specific determination is made that funding for assessment or cleanup activities will meet the criteria set forth in the statute and meet the goals and criteria of the brownfields program.

- Facilities subject to planned or ongoing removal actions under CERCLA.\*
- Facilities currently listed, or proposed to be listed, on the NPL.
- Facilities subject to a unilateral administrative order, a court order, an administrative order on consent, or a judicial consent decree under CERCLA.
- Facilities that have been issued or entered into a unilateral administrative order, a court order, an administrative order on consent, or judicial consent decree or to which a permit has been issued by the U.S. or an authorized state under RCRA, FFWPCA, TSCA, or SDWA.\*
- Facilities subject to RCRA corrective action (§3004(u) or §3008(h)) to which a corrective action permit or order has been issued or modified to require the implementation of corrective measures.\*
- Land disposal units that have submitted a RCRA closure notification or that are subject to closure requirements specified in a closure plan or permit.\*
- Facilities subject to the jurisdiction, custody, or control of a department, agency, or instrumentality of the U.S., except for land held in trust for an Indian tribe.
- Portions of facilities where there has been a release of PCBs and is subject to TSCA remediation.\*
- Facilities receiving monies for cleanup from the LUST trust fund.\*

The types of facilities marked with an asterisk above may qualify for brownfields funding if EPA makes a property-specific determination that brownfields funding will protect human health and the environment **and** will either promote economic development or the creation, preservation, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes. A determination of eligibility for funding will be made by EPA at the time of proposal evaluation.

Grant applicants must determine whether the property or properties that are the subject of their proposal fall within the scope of one or more of the funding exclusions listed above. Actual

determinations of eligibility or exclusion will be made by EPA. However, if one or more sites that are the subject of a grant proposal fall within the scope of any of the facility types listed above, the grant proposal should specifically identify the site or sites, identify the applicable funding exclusion from the list above, and describe why each site falls within the exclusion. Descriptions summarizing the scope of each of the funding exclusions listed above are provided in *Appendix 3* of these guidelines.

#### 4.3 Criteria for Determining Eligibility for Funding on a Property-Specific Basis

Certain sites that are excluded from funding eligibility because the sites fall within the scope of the statutory exclusions from the definition of “brownfield site” may qualify for brownfields funding if a property-specific determination is made that the sites meet the goals and criteria of the brownfields program and the criteria set forth in the statute. The following types of facilities, although excluded from the definition of brownfield site above, are *eligible for property-specific determinations for brownfields funding*:

1. Facilities subject to planned or ongoing renovation action under CERCLA.
2. Facilities to which a permit has been issued by the U.S. or authorized state under RCRA, FWPCA, TSCA, or SDWA.
3. Facilities subject to RCRA orders requiring corrective action (§3004(u) or §3008(h)).
4. Land disposal units that have submitted a RCRA closure notification or that are subject to closure requirements specified in a closure plan or permit.
5. Portions of facilities where there has been a release of PCBs and is subject to TSCA remediation.
6. Facilities receiving monies for cleanup from the LUST trust fund.

In the case of each type of facility listed above, the new legislation allows EPA to award financial assistance to an eligible entity for assessment or cleanup activities at the site, if it is found that financial assistance will:

1. Protect human health and the environment, **and**
2. Either:
  - promote economic development, or
  - enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes.

Grant proposals for brownfields funding that include, within the scope of planned assessment or cleanup activities, sites, properties, or facilities that potentially fall within any of the funding exclusions listed above, should specifically identify such sites and explain, in as much detail as possible, why the availability of brownfields funding will protect human health and the environment and promote economic development or the creation or preservation of greenspace (or other listed objectives). Information provided by the applicant in addressing these criteria will be used in documenting EPA's decision in making property-specific determinations for funding eligibility.

#### 4.3.1 Protection of Human Health and the Environment

Grant applicants must provide a detailed discussion of how financial assistance for brownfields assessment or cleanup activities at each site for which a property-specific determination for funding eligibility must be made will result in the allocation of funding in accordance with legislative intent. Each proposal for financial assistance, including a recipient of a revolving loan fund grant seeking EPA approval of loan, whose proposal includes one or more sites for which a property-specific determination must be made must include a discussion of how brownfields funding will ensure protection of human health and the environment. Documentation supporting a determination that brownfields funding will ensure protection of human health and the environment should include documentation of one or more of the following:

- Specific examples of human health risks that will be mitigated by activities funded under a brownfields grant.
- Specific environmental improvements that can reasonably be expected to result from activities funded under a brownfields grant.
- Specific examples of contamination that will be addressed, including the specific hazardous substances, pollutants, or contaminants of concern and the environmental media that will be addressed.
- Description of how the proposed cleanup and redevelopment of the property will ensure that the property will be protective of human health and the environment and that the remedy will be both protective and consistent with the planned reuse of the property.

#### 4.3.2 Promote Economic Development

Applicants also must provide detail on how financial assistance will promote economic development or the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes. Documentation of economic development activities should include information such as the following:

- A description of economic development activities that can reasonably be expected to occur as a result of brownfields funding (e.g., number of jobs created, estimated increase in the property and/or profits/sales tax base to community, additional business expansion or new business relocation that may occur within the community).
- A description of how the redevelopment of the brownfields property will contribute to community-wide redevelopment and revitalization plans with a specific emphasis on how funding for the brownfields redevelopment is integral to the success of the community-wide plan.
- A description of new businesses or business expansions that are planned for the brownfields property.

#### 4.3.3 Creation of, Preservation of, or Addition to Parks, Greenways, Undeveloped Property, other Recreational Property, or Other Property Used for Nonprofit Purposes

If brownfields funding will be used by the applicant to preserve or create greenspace, recreational areas, undeveloped property, or property to be used for nonprofit purposes, the applicant should provide specific documentation of these activities in the proposal. Grant proposals should provide specific information documenting how brownfields funding will result in the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes, such as:

- A description of the proposed park, recreational property, greenspace, undeveloped space, or other type of property to be used for nonprofit purposes, including size, use, and surrounding environment that will be preserved or created as a result of brownfields funding.
- An assessment of how the property will be used and by whom.
- A description of how the property will be integrated with surrounding properties or environments.
- A description of how the property will be maintained or preserved for its continued use as a greenspace, recreational area, etc.

When documenting compliance with these criteria, applicants may copy information provided elsewhere in their proposal, if such information directly addresses the criteria. However, all documentation must be comprehensive and specific to actual events that will be mitigated or can reasonably be expected to occur as a result of federal brownfields funding, should the applicant receive brownfields funding.

#### 4.3.4 Other Documentation

Property-specific brownfields funding determinations will be made based upon the availability of funding and the extent to which applicants can provide documentation that funding for particular sites offers opportunities to protect human health and the environment and enhance economic development or create or preserve greenspace (as the criteria is described above). However, at the same time, Congress explicitly prohibited the use of federal brownfields funding to reimburse liable parties for response costs. The statute prohibits grant and loan monies from being used for the payment of response costs at brownfield sites for which the recipient of a grant or loan is potentially liable (§101(k)(4)(B)(i)(IV)). Applicants are encouraged to address, in the body of the proposal, why federal funding is appropriate for brownfields assessment and/or cleanup at the site, given that brownfields funding cannot be used to reimburse liable property owners for response activity costs.

#### 4.4 Properties Not Eligible for Brownfields Funding

Grant applicants must keep in mind that the regulation *excludes certain types of facilities from qualifying for the property-specific* funding determinations and therefore from federal brownfields financial assistance. Sites or facilities that *may not* be included within the scope of a grant proposal and for which brownfields grants and loans cannot be made available *regardless of property-specific circumstances* include the following types of sites or facilities:

- Facilities listed or proposed for listing on the NPL.
- Facilities subject to a unilateral administrative order, an administrative order, a court order, an administrative order on consent, or a judicial consent decree issued or entered into by parties under CERCLA.
- Facilities that are subject to the jurisdiction, custody, or control of the United States government, except for land held in trust by the U.S. for an Indian Tribe.

Applicants should note that the discussion of property-specific determinations for funding sites that are otherwise excluded from funding eligibility that is provided here only applies to funding determinations. This discussion does not apply to, or have bearing on, any other property-specific determinations or other aspects of the brownfields program. For example, a property-specific determination for funding purposes in no way affects a facility's or an entity's status with regard to EPA's enforcement and cost recovery authorities.

#### 4.5 Additional Information on Potential for Continual Funding at Sites Subject to Removal Actions

Some brownfield sites that receive federal brownfields assessment grants may, as a result of the federally funded site assessment require a CERCLA removal action. Under the Brownfields Law (§101(39)(B)(i)), sites that are subject to planned or on-going removal actions under CERCLA are excluded from funding eligibility. However, such sites may receive federal brownfields funding if a property-specific determination is made that such funding will meet the property-specific determination criteria. Applicants should follow the procedures listed in the previous section to request a property-specific determination. (Note: If a removal action is required at a site where an assessment grant exists, the grantee does not need to obtain the property-specific determination noted above. However, grant recipients must obtain approval from the EPA removal OSC prior to any onsite work commencing.)

Grant applicants requesting federal brownfields funding and recipients of revolving loan fund grants seeking EPA approval of loans for sites at which a CERCLA removal action is planned or on-going must document in their proposals (or loan approval requests) that the requested funding will be used in accordance with legislative intent. Therefore, proposals must include a discussion of how brownfields grant or loan funds will ensure protection of human health and the environment and provide detail on how financial assistance will promote economic development or the creation of, preservation or, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes. Requests for property-specific determinations for funding for the assessment or cleanup of properties where there is a planned or ongoing removal action will be considered in the following circumstances: 1) when it is clear a follow-on response action will be required to address long-term threats at a site; and 2) in cases where portions of a site are not under the current scope of a planned or ongoing removal action.

In addition to the specific criteria listed above, applicants also should explain in their proposal the extent to which other funding sources are not available for the assessment and/or cleanup of the site or property. Federal brownfields funding cannot be used to reimburse liable parties for response costs. In addition, federal brownfields funding may not be used for an ensuing removal action. Applicants should specifically address, in the body of the proposal, why federal funding is appropriate for brownfields assessment and/or cleanup at the site, given the Congressional intent not to reimburse liable property owners for response activity costs.

#### 4.6 Additional Information on Potential Funding for Petroleum-contaminated Sites

As noted above, portions of facilities receiving assistance for response activities from the LUST trust fund are excluded from eligibility for brownfields funding. However, these facilities are eligible for funding on a property-specific basis. To assist applicants in determining whether their sites are good candidates for property-specific funding determinations, below are examples

of “ineligible” sites (i.e., sites receiving LUST trust fund monies) EPA considers to be potentially good candidates to receive brownfields grants or loans under the property-specific determination provisions of the Brownfields Law (i.e., CERCLA §101(39)(C)).

- All USTfields pilots.
- Sites (or portions of properties) where an assessment was completed using LUST trust fund monies and the state has not determined the site to be a “high risk” site and, although an assessment was completed using LUST trust fund monies, the site needs further assistance to conduct a cleanup. Although the site is otherwise a good candidate for economic revitalization, additional LUST money cannot be provided for the cleanup of petroleum contamination.
- Sites (or portions of properties) where LUST money was spent for emergency activities, and are otherwise determined to be ineligible for further LUST trust funds, yet the site needs additional funding for continued assessment and/or cleanup that will contribute to economic revitalization of the site.

#### 4.7 Eligible Response Sites/Enforcement Limit

The Brownfields Law limits EPA’s enforcement and cost recovery authorities at “eligible response sites” where a response action is conducted in compliance with a state response program. Section 101(40) defines an “eligible response site” by referencing the general definition of a “brownfield site” in §101(39)(A) and incorporating the exclusions at §101(39)(B). The law places further limitations on the types of sites included within the definition of an eligible response site, but grants EPA the authority to include within the definition of eligible response site, and on a property-specific basis, some facilities that are otherwise excluded from the definition. Such property-specific determinations must be based upon a finding that limits on enforcement will be appropriate, after consultation with state authorities, and will protect human health and the environment and promote economic development or facilitate the creation of, preservation, or addition to a park, a greenway, undeveloped property, recreational property, or other property used for nonprofit purposes. While the criteria appear similar to those for determining eligibility for funding on a property-specific basis, the determinations are distinct, will be made through a separate process, and may not be based on the same information requested in this document for property-specific funding determinations.